

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA	§	
	§	
v.	§	NO. 3:04-CR-240-P
	§	
HOLY LAND FOUNDATION FOR	§	
RELIEF AND DEVELOPMENT (1)	§	
also known as the “HLF”	§	
SHUKRI ABU BAKER (2)	§	ECF
MOHAMMAD EL-MEZAIN (3)	§	
GHASSAN ELASHI (4)	§	
HAITHAM MAGHAWRI (5)	§	
AKRAM MISHAL (6)	§	
MUFID ABDULQADER (7)	§	
ABDULRAHMAN ODEH (8)	§	

**GOVERNMENT’S MOTION TO STRIKE ENTRY OF APPEARANCE OF
COUNSEL AND NOTICE OF APPEAL OR, IN THE ALTERNATIVE,
MOTION TO SHOW CAUSE WHY SUCH PLEADINGS SHOULD NOT BE
STRICKEN**

The Government moves to strike pleadings purportedly filed on behalf of the defendant Holy Land Foundation for Relief and Development (HLF) which were captioned as Notice of Entry of Appearance (ecf # 1302 filed June 5, 2009) and Notice of Appeal (ecf # 1303 filed June 5, 2009), or, in the alternative, for the entry of an order to show cause why such pleadings should not be stricken. Both pleadings were filed by counsel Ranjana Natarajan, whose application for admission *pro hoc vice* is apparently pending.

The basis of the government's motion is its belief, based on representations from prior counsel for HLF and a conversation with Ms. Natarajan, that Ms. Natarajan has not been retained by the HLF and is therefore not qualified to enter an appearance on behalf of the organization or to file a notice of appeal.

On July 17, 2007, during pretrial proceedings before Judge Fish, the government raised the issue of the sufficiency of the waivers of conflict of interest signed and submitted by the defendant Shukri Abu Baker and Ghassan Elashi on behalf of defendant Holy Land Foundation for Relief and Development (HLF). Vol. 2, page 523-24, Trial transcript.¹ The need for such waivers was due to the fact that, according to the docket sheet for the case, the defendant Abu Baker was being represented by appointed counsel Nancy Hollander, a member of the law firm Freedman, Boyd, Hollander, Daniels & Goldberg of Albuquerque, New Mexico, *see* ecf # 123, CJA 20 Appointment of Counsel filed March 3, 2005, and John Boyd, of the same firm, as retained counsel. *See* ecf # 82, Entry of Appearance (as retained counsel) for defendant Abu Baker, filed by John Boyd on September 13, 2004.² In addition, the defendant HLF, according to the docket sheet,

¹This transcript reference may also be found at ecf # 1192, page 257-58 of that document.

²See also ecf # 719, Entry of Appearance (as appointed counsel) for the defendant Abu Baker filed by Ms. Duncan on July 16, 2007, one day prior to the discussion of the issue of dual representation. Until Ms. Duncan's statement in court that she had also been appointed by the Court to represent Mr. Abu Baker, the government was unaware of the fact that she had been appointed. A search of the docket sheet does not reflect any entry showing the filing of a CJA 20 form by the magistrate judge appointing Ms. Duncan. The government believes the appointment was done in an *ex parte* sealed filing which was not disclosed to the government. The government is unaware of any reason such an action would require

was being represented by Mr. Boyd, Ms. Hollander and Ms. Duncan as retained counsel. *See* ecf # 82, Entry of Appearance (as retained counsel) for the HLF filed by Nancy Hollander and John Boyd (of the above named law firm) on September 30, 2004; and ecf # 718, Entry of Appearance (as retained counsel) filed by Ms. Duncan (who is also a member of Ms. Hollander and Mr. Boyd's law firm) on July 16, 2007.

At the government's request, the defendant Abu Baker and the defendant HLF had previously submitted written waivers of conflict of interest. *See* ecf # 376, Defendant HLF's Waiver of Any Potential or Actual Conflict of Interest, signed by Ms. Hollander and the defendant Ghassan Elashi, as the Board Chairman of the HLF, filed on September 29, 2006; ecf # 375 Defendant Shukri Abu Baker's Waiver of Any Potential or Actual Conflict of Interest, signed by Ms. Hollander and the defendant Shukri Abu Baker, filed on September 29, 2006.

The government was of the view (as was Judge Fish) that Rule 44 of the Federal Rules of Criminal Procedure requires, in addition to any written waiver filed by a defendant, an on-the-record colloquy between the trial judge and any defendant whose counsel represents another defendant.³ *See United States v. Garcia-Jasso*, 472 F.3d 239,

an *ex parte* sealed filing to be withheld from the government.

³**Rule 44(c) Inquiry Into Joint Representation**

(1) **Joint Representation.** Joint representation occurs when:

- (A) two or more defendants have been charged jointly under Rule 8(b) or have been joined for trial under Rule 13; and
- (B) the defendants are represented by the same counsel or counsel who are

243 (5th Cir. 2006). (Citations omitted).

Upon inquiry by the Court, the defendants, specifically counsel for defendant Ghassan Elashi, the Chairman of the Board of the HLF, (Mr. Cline) and counsel for Mr. Abu Baker and the HLF (Ms. Hollander), requested to have until the next day to respond to the Court's question. Vol. 2, page 526 (ecf # 1192, page 260). The next day, upon inquiry by Judge Fish, Mr. Cline, as counsel for Mr. Elashi, stated that, despite having signed the written waiver, Mr. Elashi could not speak for the HLF. (Vol. 3, p. 822, lines 5-13). Thereafter, Ms. Hollander, on behalf of the defendant Abu Baker (and presumably the HLF) stated that Mr. Abu Baker could not speak on behalf of the HLF. (Vol. 3, p. 822, lines 16-19). Judge Fish then specifically asked if they were advising him that there was no natural person to appear as the representative of the HLF, to which Ms. Hollander agreed. Vol. 3, p. 822, lines 20-25, p. 823, lines 1-5.

On July 20, 2007, Judge Fish sought to follow up on the issue of attorney representation. Vol. 5, p. 1013 (ecf # 1195, p. 3). At the time, Ms. Hollander advised the court that there was no one present to represent the HLF and, therefore, she and her firm, *i.e.* Mr. Boyd and Ms. Duncan, could not represent the HLF. (Vol 5, p. 1013-14). Ms.

associated in law practice.

(2) Court's Responsibilities in Cases of Joint Representation. The court must promptly inquire about the propriety of joint representation and must personally advise each defendant of the right to effective assistance of counsel, including separate representation. Unless there is good cause to believe that no conflict of interest is likely to arise, the court must take appropriate measures to protect each defendant's right to counsel.

Hollander went on to advise the Court that she and her co-counsel were withdrawing from its representation of HLF. Vol. 5, p. 1014-15.

As a consequence of these representations by the referenced counsel and the actions of Ms. Hollander and her co-counsel, Mr. Boyd and Ms. Duncan, the HLF was unrepresented by counsel during the initial trial as well as the retrial which took place before this Court in 2008. Neither Ms. Hollander, Mr. Boyd or Ms. Duncan was present when HLF was sentenced on May 27, 2009.

With this background, on June 5, 2009, Ms. Natarajan filed with the clerk's office the aforementioned Notice of Entry of Appearance of Counsel and Notice of Appeal. Following the receipt of electronic notice of the filing of these two pleadings, the undersigned government counsel contacted Ms. Natarajan by phone to inquire about her entry into the case and to determine who, if anyone, was now acting as the agent or representative of the HLF. In that conversation, she did not indicate that anyone had retained her on behalf of the HLF or that there was any agent or representative to speak or act on behalf of the HLF.

Based upon the factual background as previously set forth in this motion, and its conversation with Ms. Natarajan, the government is of the belief that there continues to be no authorized representative to speak or act on behalf of the defendant Holy Land Foundation for Relief and Development. The government submits that the

aforementioned pleadings must therefore be stricken from the record. In addition, the government submits that the time period for filing notice of appeal on behalf of the defendant HLF should be calculated as though no notice of appeal had been filed. To determine otherwise would be to improperly toll Federal Rules of Appellate Procedure Rule 4's running of the time to file notice of appeal which is 10 days from the date of the entry of the judgment in the case.

In the alternative, the government submits that the Court should enter an order to show cause as to why the pleadings in question should not be stricken and, after a hearing or other review of any evidence presented, enter the appropriate order.

Date: June 12, 2009

Respectfully submitted,

JAMES T. JACKS
Acting United States Attorney

/s/ James T. Jacks
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CERTIFICATE OF CONFERENCE

This is to certify that the government attempted to confer with Ms. Natarajan regarding her position in regard to this motion but has not received a reply and therefore assumes that she is opposed to the motion.

/s/ James T. Jacks

JAMES T. JACKS

Acting United States Attorney

CERTIFICATE OF SERVICE

I hereby certify that on June 12, 2009, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to all counsel of record.

/s/ James T. Jacks

JAMES T. JACKS

Acting United States Attorney