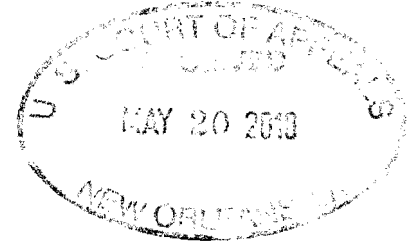


3108 Circle Hill Road  
Alexandria, VA 22305  
Tel. (703) 980-5029  
May 19, 2010

Clerk  
United States Court of Appeals for the Fifth Circuit  
600 S. Maestri Place  
New Orleans, LA 70130-3408



Re: U.S.A. v. Holy Land Foundation/North American Islamic Trust  
Docket No. 09-10875

Dear Sir or Madam:

I write to urge the Court to reconsider its order of May 5, 2010 sealing certain records in the above-captioned matter.

In early February 2010, I contacted the Court by telephone to obtain a copy of the appellant's opening brief. Just prior to making the call, I checked the court docket, which at that time contained no indication that the brief was under seal or that anyone was seeking to seal it. I provided my credit card information and was told the brief would be sent to me promptly.

It appears that motions to seal the records were added to the court's public docket sometime after my telephone call in February. I received neither the brief nor any further communication from the court.

Upon review of the motions, I believe that they seek sealing of the Court's records that go beyond any secrecy required or authorized under the law. I note that there is in most cases a public right of access to court records under either the Constitution, the common law, or both. See Nixon v. Warner Communications, Inc., 435 U.S. 589, 597 (1978); Belo Broadcasting Corp v. Clark, 654 F.2d 423, 429 (5<sup>th</sup> Cir. 1981); Securities and Exchange Commission v. Van Waeyenberghe, 990 F. 2d 845 (5<sup>th</sup> Cir. 1993). "[T]he district court's discretion to seal the record of judicial proceedings is to be exercised charily." Federal Savings & Loan Ins. Corp. v. Blain, 808 F.2d 395, 399 (5<sup>th</sup> Cir. 1987).

The docket and public record in this case are silent on whether the findings required to to enter a dealing order have been addressed by this Court or the court below.

There is a significant public interest in this case and about the co-conspirator list dispute which appears to be the subject of this appeal. See, e.g., Josh Gerstein, N.Y. Sun, "Islamic Groups Named in Hamas Case," June 4, 2007 at 5; Neil MacFarquhar, N.Y. Times, "Muslim Groups Oppose a List of 'Co-Conspirators'," Aug. 16, 2007 at A19; "Group Asks For Removal from Terror-Finance Co-conspirators List," Associated Press, Aug. 16, 2007; Audrey Hudson, "Judge to Rule on Groups' Terrorist Link Status," Wash. Times, Sept. 14, 2007 at A03; Josh Gerstein, "Groups Want Names Cleared in Holy Land Case," N.Y. Sun, June 19, 2008 at 5; Jason Trahan, "Holy Land Case: Groups Want Off Co-Conspirator List," Dallas Morning News, June 19, 2008 at 7B; Tim Starks, "Kyl, Schumer Join Wolf in Seeking Information on FBI-CAIR Split," Congressional Quarterly Homeland Security, Feb. 24, 2009; Noreen Ahmed-Ullah, "Muslim groups weigh breaking ties with FBI," Chicago Tribune, Mar. 22, 2009 at 27; Jim Walsh, "U.S. Rep Meets Group Accused of Terror Ties," Ariz. Republic, Sept. 19, 2009 at 1; Kara Rowland, "GOP Lawmakers Seek Muslim 'Spy' Probe," Wash. Times, Oct. 15, 2009 at A2; Josh Gerstein, "Despite Ban, Holder to Speak to CAIR-linked Group," Politico.com, Nov. 9, 2009; Kate Howard, "Ahmed critics focus on CAIR, its controversy," Fla. Times-Union, Apr. 26, 2010 at A-1.

The facts that appear to be at issue here have also been discussed during at least one Congressional hearing. See Terrorism, Nonproliferation and Trade Subcommittee, House Foreign Affairs Committee, "Foreign Aid and the Fight Against Terrorism and Proliferation," July 31, 2008, (available at <http://foreignaffairs.house.gov/110/43840.pdf>).

In addition, I note that many of the motions and briefs which led to the judge's decision in the District Court were placed on the public record and generated significant attention in the press. Since that time, some of the court records seem to have been sealed by the court, though the basis for and effectiveness of the belated sealing is unclear. See, e.g. U.S. v. Holy Land Foundation, No. 3:04-cr-240 (N.D. Tex.) District Court docket entries no. 777, 797. Other filings were public and remain so as of this writing. See, e.g. District Court docket entries no. 824, 1060-62, 1086, 1096, 1266. Some relevant filings may be entirely absent from the District Court's public docket and may be under seal without any decision by the District Court. See Appellant's Motion for Leave to File Under Seal Its Appellant's Initial Brief and Record Excerpts at 2-3.

I am a journalist who wrote some of the news stories cited above and has continued to follow and write about the case. The secrecy surrounding this appeal has impeded my ability to cover the proceedings in a comprehensive fashion.

Given that these matters were litigated publicly in the district court, it seems illogical that the appeal from their resolution ought be resolved in total secrecy.

It is possible there are reasons why portions of the briefs or the record should remain sealed to protect some confidentiality interest which courts have found to supersede the public's right of access to court records. However, I contend that these concerns are not sufficient to require or even permit the sealing of the materials in their entirety. Even if the Court determines some such interest is sufficient to require or permit confidentiality, the parties should be required to file redacted briefs that exclude those materials but permit the public to take notice of the rest of the arguments.

I note that while the sealing motions before this Court were docketed as "unopposed," the situation is actually more complex. Appellant's Motion to Seal stated: "NAIT opposes the District Court's sealing order shielding the July 1, 2009 order from the public and believes the order should be public." App.'s Mot. at 3, n.1.

Finally, this Court should be aware that the order that is the subject of this appeal was not described at all on the District Court's public docket until the undersigned came across the appeal in October 2009 and inquired with the District Court about the underlying order. Shortly thereafter the District Court briefly noted its July 1, 2009 order in the docket, indicating it granted in part and denied in part the relief sought by Appellant. Therefore, the public did not have knowledge of the District Court's order until after this appeal was filed and the lower court was divested of jurisdiction.

I submit that this Court has inherent power over its own records and should ensure that any erroneous decision regarding sealing by the District Court does not cause this Court's records to fall victim to a pervasive and unwarranted degree of secrecy.

In addition, I note that while the sealing order in this matter was entered by a single judge of the Court, under the terms of Circuit Rule 27.2, an order granting a motion to seal pleadings is not among those a single judge is authorized to resolve.

In view of the above, I ask the court to reconsider its order of May 5, 2010. In the alternative, I ask the court to treat this request as a motion to unseal the briefs and record.

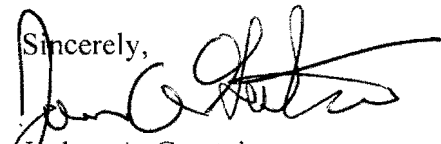
Clerk, U.S. Court of Appeals for the Fifth Circuit

May 19, 2010

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I am sending a copy of this request to counsel for the Plaintiff and the Appellant on this date, via postal mail and e-mail.

Sincerely,



Joshua A. Gerstein  
Pro Se

cc: Susan Cowger, Assistant U.S. Attorney, U.S. Attorney's Office, Northern District of Texas, Room 300, 1100 Commerce Street, Dallas, TX 75242

Vijay Shanker, U.S. Department of Justice, Criminal Division, Room 1264, 950 Pennsylvania Avenue, N.W. Washington, DC 20530

Timothy M. Maggio Locke, Lord, Bissell & Liddell, L.L.P., 111 S. Wacker Drive, Chicago, IL 60606