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August 5, 2010

Mr. Lyle W. Cayce
Clerk of Court
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 Mr. Cayce:

I am writing to call your attention to an error in the Court's docket relating to the above-captioned case, to reiterate my objection to the continued sealing of the records and briefs in this matter, and to object to the sealing of oral argument in this case.

On May 20, 2010, I submitted a letter to the Court asking it to reconsider its Order of May 5, 2010 sealing records and briefs in this case and, in the alternative, moving to unseal those materials. I also questioned whether the May 5 Order from a single judge of this court complied with the Court's rules.

The Clerk's office subsequently advised me that the letter had been docketed as a Motion to Unseal and referred to the merits panel for this case.

On July 30, 2010, I checked the docket in this case and saw, for the first time, what was styled as "Appellant's Motion to Seal Oral Argument or, in the Alternative, Request for Instructions Concerning Oral Argument." The Motion was docketed as follows (as of July 30):

07/20/2010 UNOPPOSED MOTION FILED by Appellant North American Islamic Trust . Date of service: 07/20/2010 via email - Attorney for Appellant(s): Loose, Maggio, Stephenson; Attorney for Appellee(s): Cowger, Shanker; US mail - Movant Gerstein [09-10875] REVIEWED AND/OR EDITED. UNOPPOSED MOTION to seal oral argument. [09-10875] (TMM)

I also learned for the first time on July 30, that the Court had on July 27 denied my May 20 Motion and granted the Appellant's Motion to Seal. (I received written notification of that Order by mail on July 31.)

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I was surprised that the Motion to Seal Oral Argument was filed without serving a copy on me. I was even more surprised to read in the docket that I had been so served, since I did not receive copy of the Motion, was not consulted on whether I would oppose it and was, indeed, entirely unaware of it until I happened to check the docket ten days later.

When I inquired with two Deputy Clerks about who entered the notation that I was served by "US mail," they said they could not be certain but it appeared it was entered by Appellant's counsel at the time the Motion to Seal was filed.

I placed two telephone calls to counsel for Appellant in order to determine whether there may have been an error, oversight or failure of mail service with respect to Appellant's Motion but as of this writing have not received the courtesy of a reply.

When I examined the docket again on August 2, the reference to service on me was gone. No immediate explanation for the change was available from the Clerk's office.

I believe due process, simple principles of fair play and common courtesy all should have dictated that I receive a copy of Appellant's Motion at the time it was filed. I am not a party to the case, but I had expressed a clear interest in access to the proceedings and had been added by the Clerk to the case's caption as a Movant. In addition, I note that the Appellant's Motion to Seal made direct reference to my pending Motion. See Appellant's Motion to Seal at 2.

In any event, during the time the docket reflected erroneously that I had been served with Appellant's Motion, the judges assigned to this case or their law clerks may have relied on the notation of that service to conclude that the description of the Motion to Seal as unopposed meant that I did not oppose sealing the oral arguments.

I would have opposed that Motion had I known about it in a timely fashion, and I continue to oppose that closure and to object to the pervasive sealing in this case for the reasons noted in my Motion to Unseal.

In order to correct any misimpression the judges may have been under regarding the Motion to Seal, and to preserve my rights for further judicial review, I ask that you advise the judges of the error in the docket and of my continuing objection to the sealing in this case.

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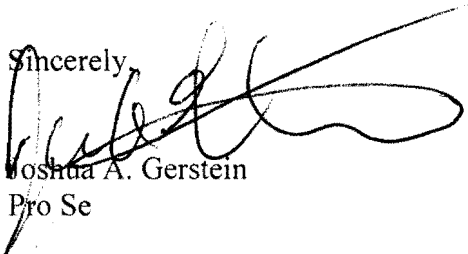
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If you have any questions regarding this matter, please do not hesitate to telephone me at the number above.

I have sent a copy of this letter 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