

# THE HOLY LAND FOUNDATION CASE\*

**IMPACT:** The Holy Land Foundation (HLF) was the largest Muslim charity in the U.S. before it was selectively targeted by the Bush administration less than three months after the 9/11 attacks. After years of litigation—including a mistrial and constitutionally-dubious prosecutorial tactics—the federal government eventually secured criminal convictions against HLF and five of its officers/employees, including Shukri Abu Baker, Ghassan Elashi, Mohammed El-Mezain, Abdulrahman Odeh, and Mufid Abdulqader. The Holy Land Foundation case was paradigmatic for the federal government because they viewed it as a high-profile, post-9/11 counterterrorism financing case. The case has also been used by anti-Muslim activists and organizations to smear Muslim American leaders and organizations as ‘terror-linked.’

- **Founded in 1989, the Holy Land Foundation for Relief and Development (HLF) was an American Muslim charity and non-profit organization based in Texas. It was primarily run by Palestinian-American Muslims and eventually became the largest Muslim charity in the U.S. at the time, raising** approximately \$56 million in donations between 1995 and 2001. HLF provided relief efforts in occupied Palestine, to Palestinian refugees in Lebanon and Jordan, as well as to those in need in Kosovo, Chechnya, and domestically in the U.S.
- Pursuant to the International Emergency Economic Powers Act of 1977, Executive Order 13224, and Executive Order 12947, **President George W. Bush announced in December 2001 that the U.S. Treasury Department had summarily frozen all of the financial assets and accounts of HLF, designating the Muslim charity a “Specially Designated Terrorist” (SDT). Alleging** that HLF had raised money for Hamas to “support schools and indoctrinate children to grow up into suicide bombers” and “recruit suicide bombers and to support their families,” Bush stated that federal officials had “secured the offices and records” of HLF offices in Texas, California, New Jersey, and Illinois “as a part of an ongoing investigation.”
- According to the American Civil Liberties Union (ACLU), **the government designation of a “Specially Designated Terrorist” (SDT) usually relies on “vague criteria and lacks an evidentiary standard” and “the designation process itself is unclear.”** Furthermore, the ACLU stated that the **“consequences of [SDT] designation are draconian”** because it results in the immediate freezing of that charity’s funds without notice or due process.
- Hamas, an Arabic acronym for “Islamic Resistance Movement,” was founded in Palestine in 1987 as a political and social organization, with an armed wing aimed at resisting the Israeli occupation of Palestine. Pursuant to the Antiterrorism and Effective Death Penalty Act of 1996, in October 1997 the U.S. government—under Clinton—officially designated Hamas a Foreign Terrorist Organization (FTO). **This FTO designation has been criticized by legal scholars as being politicized by the State Department, and as raising issues concerning due process, equal protection, judicial deference, the chilling of free speech, and having “disparate impact on the Arab Muslim community.”**
- **During the 1990s, the Israeli government, U.S. organizations such as the Anti-Defamation League (ADL), American politicians such as then-U.S. Representative Chuck Schumer (D-N.Y) and then-Attorney General of New York Eliot Spitzer, and anti-Muslim “misinformation expert” Steve Emerson, lobbied the U.S. government to take action against HLF, claiming** that HLF and its officers were connected to ‘terrorism.’ **Beginning in the early 1990s, the U.S. government obtained approvals for warrantless surveillance on HLF** by the Foreign Intelligence Surveillance Court (FISC), a secretive court established in 1978 that, according to the Charity and Security Network, permits the U.S. government to “to conduct clandestine wiretaps and physical searches based on a one-sided presentation by the DOJ, and without meeting the Fourth Amendment’s probable cause standard.”
- **In March 2002, HLF brought a lawsuit against the federal government (Holy Land Foundation for Relief and Development v. John Ashcroft, et al.), challenging the terrorism designation and freezing of its funds.** The judge ruled in favor of the federal government to dismiss the case except as it concerned a search and seizure claim under the Fourth Amendment. Upon appeal, in June 2003, the U.S. Court of Appeals for the District of Columbia Circuit affirmed the decision of the District Court and ordered summary judgment for the government. Subsequently, HLF’s petition for a rehearing by the full appellate court was denied, and the U.S. Supreme Court in March 2004 denied HLF’s petition for its case to be reviewed.
- **In July 2004, HLF filed a complaint with the Justice Department Inspector General alleging that the FBI had knowingly falsified a legal affidavit that was used in the process of designating HLF a terrorist organization. Later that same month,**

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then-Attorney General John Ashcroft announced the indictment of the Muslim charity and seven of its officials. Ashcroft accused HLF of supporting Hamas by channeling funds to Zakat (or “charity”) committees within Palestine. Though these committees used these funds for humanitarian purposes—including partnering with the U.S. Agency for International Development (USAID)—the Bush administration argued that donations to these charities help Hamas “win the hearts and minds of Palestinians.”

- **The government argument is based on the “Material Support Statute,” which states that money is considered “fungible” support.** The fungibility argument posits that HLF humanitarian funds to the Zakat committees allowed Hamas to dedicate more money to military activities, such as training or purchasing arms, and less money to its social services.
- **HLF was eventually charged with money laundering, providing material support to a terrorist organization, and providing material support to a Specially Designated Terrorist.** HLF’s former chief executive Shukri Abu Baker was charged with 34 counts, former chairman Ghassan Elashi with 35 counts, and former chairman Mohammed El-Mezain, and HLF representative in New Jersey Abdulrahman Odeh and fundraiser Mufid Abdulqader with 32 counts each. Each HLF employee was charged with aiding a terrorist organization, conspiracy, and money laundering. Abu Baker and Elashi were also charged with tax fraud.
- **In June 2007, the first trial took place in Dallas, Texas** after several procedural delays. **The prosecution relied heavily on the testimony of two anonymous Israeli security officials.** One of the Israeli security officials testified that Hamas members held positions in the Zakat committees and that this presence was known within the Israeli intelligence community. **As the defense did not receive his name, it was unable to question his credentials, methodology, or biases.** Civil rights attorney Emily Ratner has written that the “prosecutors’ use of anonymous and hearsay evidence” was “constitutionally questionable” at best. This was the first time an anonymous expert witness has been allowed to testify in a U.S. court. **Even after the prejudicial and irrelevant evidence the prosecution managed to admit, in October 2007 the judge declared a mistrial as the jury was unable to reach a verdict on many of the 197 counts.** The jury was prepared to acquit three defendants of most charges, but did not reach a verdict on the charges leveled against Abu Baker, Elashi, and the HLF organization as an entity itself. **There was not a single conviction.**
- **Free speech organizations and civil rights lawyers have called attention to the questionable tactics and evidence used by the prosecution.** Before the start of the first trial, HLF accused the FBI of falsifying evidence in its November 2001 memorandum that provided the basis for the initial charges. They pointed to several omissions and translation errors within the legal document. **According to their attorneys, the statement from an HLF manager in the West Bank was “falsified” by an anonymous FBI translator. The translated statement reportedly admitted that HLF gave money to Hamas, but this acknowledgment was not in the original Arabic statement.** Furthermore, the FBI mentioned the HLF’s support to a Hamas-affiliated hospital in Palestine, but omitted that USAID had also supported the same hospital.
- **The alleged connection between the Zakat committees and Hamas was also called into question by HLF lawyers.** The U.S. government had never officially designated any of these Zakat committees that received HLF donations as terrorist organizations. **Many of the committees—as well as other recipients of HLF funds such as hospitals—had also received aid from UN organizations, USAID, and the Red Cross.** The former U.S. Consul General in Jerusalem, Edward Abbingtion, testified that throughout his daily CIA briefings in his time in Israel, **he had never received an indication that the committees were associated with Hamas.**
- **Additionally, much of the evidence used to convict the defendants was “secret evidence.”** According to the lawyer of one of the HLF defendants, the **defendants were unable to review evidentiary statements collected through government wiretapping for “national security” reasons.** The “secret evidence” used in the HLF case included statements from alleged co-conspirators, but the defense was unable to read these statements or know who made these statements.
- **In the 2008 retrial of the case, the government re-crafted its approach, dropping some of the original charges (bringing the total count to 108) and focusing on clarifying the alleged money trail.** Once again, as it had in the first trial, the government also showed graphic videos of Hamas suicide bombings to the jury in order to sway the jury’s emotions, despite the fact that HLF was

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never accused of funding any violent activities, and relied on the evidence from the two anonymous Israeli security officials. Ratner argues that these videos **encouraged jurors to “convict on grounds other than the actions of the defendant.”**

- **U.S. District Judge Jorge Solis, who presided over the second criminal trial, also permitted documents that had been excluded as hearsay in the first trial.** The documents had been taken from the Palestinian Authority (PA) headquarters by the Israel Defense Forces (IDF), but had been written anonymously and contained hearsay evidence (which is generally not allowed in U.S. courts). One of these questionable documents listed HLF as a source of Hamas funding. The government also presented three other new areas of evidence. This new evidence was devastating. **In November 2008, the jury convicted all five HLF defendants and the HLF organization on all counts, which included supporting a terrorist group, tax fraud, and money laundering.** In May 2009, HLF officers **Shukri Abu Baker and Ghassan Elashi were sentenced to 65 years in prison each, Mufid Abdulqader to 20 years, and Mohammad El-Mezain and Abdulrahman Odeh to 15 years each.**
- **The defense appealed to the Fifth Circuit Court following the second trial (United States v. El-Mezain). The judges ruled in December 2011 that all of the new evidence should have been excluded.** The PA documents and other instances of hearsay, and evidence that was unfairly prejudicial to the defendants and untrustworthy. **In spite of that the appellate court found all the new evidence to be harmless and denied the appeal of the HLF defendants.**
- Since that time, **the Holy Land Foundation case has been used to smear other American Muslim civic organizations.** In May 2007, the **federal prosecutors in the HLF criminal case broke with DOJ guidelines by filing a list of 246 “unindicted co-conspirators” in the case**, i.e., people who were never charged with a crime. This list included prominent American Muslim civic organizations including the Islamic Society of North America (ISNA), North American Islamic Trust (NAIT), and the Council on American-Islamic Relations (CAIR). **Even though these groups have never been charged with a crime, ACLU filed legal challenges on behalf of several of these organizations stating that “the government has acted with blatant disregard” for the organizations’ constitutional rights by labelling them as “unindicted co-conspirators.”** Muslim groups like CAIR and the National Association of Muslim Lawyers (NAML) publicly objected to the list of co-conspirators, saying that it continues the pattern of the “demonization of all things Muslim” and that this list has **provoked hate mail and death threats from the public.**
- To this day, **anti-Muslim organizations such as the Center for Security Policy, Investigative Project on Terrorism, ACT for America, the American Freedom Defense Initiative, Middle East Forum, and the David Horowitz Freedom Center continue to smear Muslim American organizations and leaders as “ Hamas-linked” and “unindicted co-conspirators.”**
- **Odeh is incarcerated in a low-security prison in Dallas, Texas, while Elashi, Abdulqader, El-Mezain, and Abu Baker were transferred in 2010 to Communication Management Units (CMUs).** CMUs were created beginning in 2006 to “isolate and segregate” certain imprisoned people from the general Federal Bureau of Prisons (BOP) population. People who are incarcerated in CMUs are “completely banned from any physical contact with visiting family members and friends,” and “other types of communication are also severely limited, including interactions with non-CMU prisoners and phone calls with friends and family members.” **Referred to as “Guantánamo North,” Muslims are disproportionately imprisoned in CMUs.** While 6% of the BOP prison population is Muslim, approximately 60% of the CMU population is Muslim. **Elashi and Abdulqader are located at a CMU facility in Marion, Illinois, while El-Mezain is at a CMU facility in Terre Haute, Indiana. Abu Baker has been transferred to a federal prison in Beaumont, Texas.**
- Elashi’s daughter Noor has been outspoken about her father’s case and helps run the organization Free the Holy Land Five. In an interview with the *Dallas Observer*, she said the experience has made her “feel very proud to be the daughter of a hero, a political prisoner who is in this situation because he saved lives.” **In 2011, Abu Baker’s daughter, Sanabel, died while he was imprisoned. Abu Baker has cited Sanabel, who was diagnosed soon after birth with disorders of the blood, lungs, and digestive system, as his inspiration for HLF.**

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