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January 27, 2010

The Honorable Eric H. Holder, Jr.
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Attorney General:

I am writing to request that you direct the Office of Professional Responsibility (OPR) or other appropriate Justice Department office to investigate and report on the unusual action by Department attorneys in publicly naming three prominent American Muslim organizations as unindicted coconspirators in a criminal case. This practice has been criticized by the federal courts and in the Department's own U.S. Attorneys' Manual.

Specifically, in May, 2007, Department attorneys publicly named over 300 individuals and organizations as unindicted coconspirators in a pending case against the Holy Land Foundation. The publicly named groups included three of the largest American Muslim organizations: the Islamic Society of North America (ISNA), the North American Islamic Trust (NAIT), and the Council on American-Islamic Relations (CAIR). All three have been active in American public life; for example, ISNA's president offered a prayer at the National Prayer Service that President Obama attended as part of his inaugural ceremonies last year.

All three organizations strongly objected to this public naming. All three filed papers in the Texas federal court hearing the case, pointing out that such public naming can be extremely harmful to those involved and has been criticized as infringing constitutional rights by the federal courts. *See, e.g., In re Smith, 656 F.2d 1101, 1106-07 (5th Cir. 1981); United States v. Smith, 776 F.2d 1104, 1112-13 (3^d Cir. 1985).* The Department's U.S. Attorney's Manual states specifically that where unindicted coconspirators are to be named, "prosecutors generally should seek leave to file such documents under seal." *U.S. Attorney's Manual, 9-27.760. See also id. at 9-11.130.* The groups contend, however, that the government has never provided an appropriate explanation for publicly naming them in this manner.

A recent news report indicates that the Texas federal judge in this case issued a sealed ruling concerning the naming of the three organizations, in which he "criticized prosecutors for

The Honorable Eric H. Holder, Jr.
Page Two
January 27, 2010

publicly filing the co-conspirators list.”¹ For all the foregoing reasons, I believe it is important that the Department itself investigate the propriety of this conduct by the federal prosecutors involved, several of whom remain employed by the Department. An investigation by OPR, and possibly a review by the Criminal Division, is clearly appropriate..

Accordingly, I specifically request that you direct appropriate Department officials to review and investigate this matter promptly and that you report to me on the results. Please direct your response to the Judiciary Committee office at 2138 Rayburn House Office Building (Tel: 202-225-3951; Fax: 202-225-7680). Thank you in advance for your cooperation in this matter.

Sincerely,

A handwritten signature in black ink that reads "John Conyers, Jr." in a cursive, flowing style.

John Conyers, Jr.
Chairman

cc: Hon. Lamar S. Smith
Mary Patrice Brown
Ronald Weich

¹*Josh Gerstein: Judge snubbed U.S. Islamic groups in secret ruling*, <http://dyn.politico.com/blogs/joshgerstein/index.cfm/tag/ACLU> (Nov. 1, 2009). According to the same report, the decision has been appealed in what apparently remains a sealed proceeding.