



December 4, 2008

## COURT UPHOLDS JUDGMENT AGAINST HAMAS SUPPORT GROUPS (*Boim v. Holy Land Foundation*)

The U.S. Court of Appeals for the Seventh Circuit in Chicago yesterday upheld in large measure a \$156 million award to the parents of David Boim, a 17-year-old U.S. citizen murdered by members of Hamas while visiting Israel. The appeals court affirmed the judgment against two groups that fund Hamas and allowed the case to continue against a third fundraising group, the Holy Land Foundation for Relief and Development (HLF).

The decision was a victory for the Washington Legal Foundation (WLF), which filed a brief urging the *en banc* appeals court to overturn a three-judge Seventh Circuit panel, which in December 2007 had overturned the Boim family's trial court victory. The *en banc* court agreed with WLF that those who donate funds to a known terrorist group are responsible under U.S. law for the group's actions -- even if the donors contend that they only intended to support the group's "humanitarian" activities.

WLF filed its brief on behalf of itself, the Jewish Institute for National Security Affairs, and the Allied Educational Foundation. WLF drafted its brief with the *pro bono* assistance of Steven Perles and Edward MacAllister of the Perles Law Firm in Washington, D.C.

"Yesterday's decision makes clear that when Congress passed legislation permitting victims to file suit against those responsible for terrorist attacks, the law was designed to punish and deter not just the gunmen or suicide bomber, but those like the Holy Land Foundation who lend support to terrorist groups," said Paul Kamemar, WLF's Senior Executive Counsel.

The case began in 1996 when 17-year-old David Boim, a U.S. citizen living in Israel, was killed in a hail of bullets fired by Hamas members while he was waiting at a bus stop with his high school classmates. His parents brought suit against HLF and other fundraising organizations under the Anti-Terrorism Act (ATA), a federal law that provides for treble damages to Americans killed or injured by acts of international terrorism. The jury awarded \$52 million in damages against HLF and two other

fundraising organizations, the Quranic Literacy Institute (QLI) and the American Muslim Society (AMS); the trial court tripled that amount to \$156 million under the ATA.

The Seventh Circuit affirmed the trial court judgment in full against QLI and AMS. It held that the ATA authorizes suits not only against those who carry out violent acts of terrorism but also against those who aid and abet those acts. It held that aiding and abetting includes providing financial support to a group one has reason to know is likely to engage in acts of terrorism. The court agreed with WLF that given the fungibility of money, even funding earmarked for the "humanitarian" work of a known terrorist group violates the ATA -- because donating to Hamas ostensibly for humanitarian purposes allows Hamas to divert funds from its humanitarian programs to the purchase of bullets and explosives.

The appeals court also held that the ATA does not infringe on expressive activities protected by the First Amendment. The court explained that individuals are free to express verbal support for a terrorist group or to provide material support to individuals who happen to be members of a terrorist group; they expose themselves to potential liability only if they channel their material support through a known terrorist organization.

The court remanded the case against HLF to the district court for further proceedings. Instead of allowing the jury to decide whether HLF was liable for the Boim family's injuries, the trial court had entered summary judgment against HLF on liability issues on the grounds that HLF's liability had already been established in connection with previous litigation between HLF and the federal government. The Seventh Circuit disagreed; it held that the matters at issue in the Boim case had not been decided in the prior lawsuit. Accordingly, on remand a jury will have to determine whether HLF was just as culpable as QLI and AMS were found to be.

WLF is a public interest law and policy center with members in all 50 States. WLF regularly participates in litigation involving terrorism and national security issues.

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For further information, contact Paul Kamenar, WLF's Senior Executive Counsel, at 202-588-0302. A copy of WLF's brief is available on its website at [www.wlf.org](http://www.wlf.org).