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December 31, 2008

VIA FACSIMILE AND ORDINARY MAIL

The Honorable Michael B. Mukasey
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Re: *United States v. Rubashkin*, U.S. District Court, N.D. Iowa

Dear Attorney General Mukasey:

On behalf of the American Jewish Committee, we write to express our deep concern—and even alarm—about the invocation of Israel's Law of Return by federal prosecutors in their bid to deny bail to a Jewish defendant in a criminal case. In articulating this concern, we express no opinion about the underlying merits of the case or about whether—the issue of the Law of Return aside—the defendant should be granted the pre-trial relief he seeks.

In the case at issue, the Government made the apparently unprecedented argument that Sholom Rubashkin, the defendant in a criminal proceeding, should be detained without bail prior to trial by virtue of Israel's Law of Return. The Law of Return provides that any Jew who arrives in Israel has an automatic right to become an Israeli citizen. Troublingly, the presiding U.S. magistrate, the Honorable Jon Stuart Scoles, credited this argument, rendering an order on November 20, 2008, that denied Mr. Rubashkin bail. Magistrate Scoles found that Mr. Rubashkin posed "a serious risk of flight" because "[u]nder Israel's 'Law of Return,' any Jew and members of his family who have expressed their desire to settle in Israel will be granted citizenship." In its response to the defendant's motion for reconsideration of Magistrate Scoles' order, the Government continues to assert the Law of Return argument—even though Mr. Rubashkin has agreed to sign a waiver of extradition.

The implications of this finding are staggering. The government has in effect argued, and a United States magistrate has in effect found, that—even in the absence of individualized factors indicating a risk of flight to Israel, and notwithstanding that Israel has an extradition treaty with the United States—a Jew may be kept in pretrial detention under circumstances where a non-Jew would likely be released on bail. If this ruling is taken on its face, each and every Jewish citizen of the United States is to be treated as a second-class citizen should he or she be unfortunate enough to become embroiled in a criminal proceeding—a result that is palpably inconsistent with equal protection principles.

Attorney General Mukasey, with great respect, we urge that you forthwith direct that this troubling—and constitutionally problematic—argument be withdrawn, and that you direct all U.S. Attorneys that the treatment of Jewish Americans as a suspect class in criminal proceedings has no place in the United States.

Respectfully,

Richard J. Sideman

David A. Harris