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December 26, 2008

BY FAX AND OVERNIGHT 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 of America v. Sholom Rubashkin
 U.S. District Court N. D. Iowa

Dear General Mukasey:

I write this letter as a follow-up to the one I sent you earlier this week, on December 22, conveying Agudath Israel of America's concern about the effort by federal prosecutors in the captioned proceeding to use Israel's Law of Return as a factor in support of pre-trial detention of a Jewish defendant.

Shortly after I sent you my December 22 letter, I became aware that Magistrate Scoles had just issued a second order in the case, denying defendant Rubashkin's motion for reconsideration of his pre-trial detention. The essence of Magistrate Scoles' ruling is that Mr. Rubashkin had not presented any additional facts not known to him at the time of the original detention hearing that would justify reconsideration. In the course of his ruling, Magistrate Scoles offered a significant clarification of his position on the Law of Return issue:

"Much of Defendant's argument is directed to the Court's reference to Israel's Law of Return. Defendant attaches too much significance to that single reference. At the time of hearing, Mr. Weiss [defendant Rubashkin's lawyer] made it clear that if Defendant attempted to seek refuge in Israel, he would be subject to extradition. Mr. Weiss served as an assistant United States Attorney for 18 years, and the Court accepted his representation."

It would thus appear that Magistrate Scoles has now acknowledged the irrelevance of Israel's Law of Return to the issue of pre-trial detention, particularly in light of the fact that Mr. Rubashkin would be subject to extradition from Israel notwithstanding the Law of Return. Although we believe it would have been appropriate under these circumstances for the Magistrate to allow Mr. Rubashkin to be free on bail pending trial, we do appreciate the Magistrate's clarification that no meaningful weight should have been given to the Law of Return argument.

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Nonetheless, the urgency of my initial request to you remains undiminished – for while Magistrate Scoles himself may have tacitly acknowledged the inappropriateness of using Israel’s Law of Return as a factor in denying Mr. Rubashkin bail, the bottom line remains that the federal prosecutors did seek to make this a significant factor. It is essential, as we see it, for the Justice Department to establish a firm policy that Jewish defendants awaiting trial will not be treated differently than their non-Jewish counterparts with respect to pre-trial detention on account on Israel’s Law of Return. That is a policy that should emanate directly from your office, and be communicated to U.S. Attorneys all across the country.

As noted in my earlier letter, I am communicating with you on behalf of Agudath Israel of America. However, I am also aware that the use of the Law of Return in the *Rubashkin* case has created quite an uproar in many segments of the American Jewish community, and the concerns I have expressed are widely shared throughout the community. May I respectfully request, therefore, that you convene an urgent meeting with Agudath Israel and other interested American Jewish groups – I will be happy to suggest an invitation list if you would like – to discuss this matter before you conclude of your tenure as Attorney General.

Many thanks and all good wishes.

Sincerely,

A handwritten signature in cursive script, appearing to read "David Zwiebel".

David Zwiebel

DZ/mr