



David Zwiebel, Esq.
*Executive Vice President
 for Government and Public Affairs*

December 22, 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:

On behalf of Agudath Israel of America, a national Orthodox Jewish organization, I write to convey our most profound concern about an ominous – and, we believe, unprecedented – development: an effort by federal prosecutors to use Israel’s Law of Return as a factor in denying bail to a Jewish defendant as he awaits trial.

The case involves allegations of bank fraud and violations of immigration and child labor laws against Sholom Rubashkin, an Orthodox Jew. The government made an application to the Honorable Jon Stuart Scoles, U.S. Magistrate Judge for the Northern District of Iowa, to have Mr. Rubashkin detained prior to trial. By order dated November 20, 2008, Magistrate Scoles granted the government’s application, finding that Mr. Rubashkin “is a serious risk of flight” – based, in part, on the fact that “[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.”

The implications of this ruling are painfully ironic. The State of Israel, shortly after its founding, enacted the Law of Return to assure Jews in countries where they are treated as second-class citizens that they had a home in the Jewish State. Now, under the logic of Magistrate Scoles’ ruling – and the federal prosecutors who advanced the argument – the very fact that the Law of Return exists is basis for treating an American Jewish defendant as a second-class citizen, keeping him confined in pretrial detention under circumstances where non-Jews might well be released pending trial.

The implications of this ruling are also breathtakingly staggering. The notion that Israel’s Law of Return makes Jewish defendants greater flight risks than their non-Jewish counterparts could result in wholesale denials of bail to Jewish defendants who would otherwise be eligible for release pending trial merely on the basis of their religious identity. Needless to say, this is both deeply offensive and extremely troubling.

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We understand that the federal prosecutors in the *Rubashkin* case, in the court papers they submitted on December 17 in opposition to defendant's motion for reconsideration of Magistrate Scoles' November 20 Order, have continued to press the Law of Return argument (notwithstanding that Mr. Rubashkin has agreed to sign a waiver of extradition). Respectfully, but urgently, we implore you to cause this argument to be withdrawn, and to make it clear to U.S. Attorneys across the nation that Israel's Law of Return has no place in any criminal proceedings against defendants who happen to be Jewish.

Many thanks for your kind consideration.

Sincerely,

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

David Zwiebel

DZ/mr