ACLJ
American Center for Law & Justice

MEMORANDUM

Homeland Security

The American Center for Law and Justice is committed to protecting our constitution and our way of life. Nearly a decade after the terror attacks of September 11, 2001, the United States of America still faces the constant threat of radical Islamic terrorists from both within and without its borders. Since that fateful day, the ACLJ has focused on National Security issues and waging an effective and constitutional war on terrorism.

We are grateful for the work of the current and previous Administrations in this area, as well as the legislators who continue to support legal tools to combat terrorism. It is clear that these initiatives are working to protect America from future attacks. Still, there are gaps in our defenses, including the threat at our borders and the infiltration of Islamic law and institutions into the United States. We admonish the President and lawmakers to take these threats seriously in order to keep Americans free and safe.

Immigration

The ACLJ recognizes that illegal immigration is a serious national security problem. Unfortunately, the federal government has fallen short in this area and has proved inadequate to the tasks of enforcing current immigration laws and building consensus toward needed reforms. Consequently, states are left to cope with the resulting security gaps on their own. The recent decision by the U.S. Supreme Court upholding the constitutionality of the Arizona Workers Act represents an important victory for Arizona and other states that wish to protect their borders and citizens. *See Chamber of Commerce v. Whiting*, 179 L. Ed. 2d 1031 (2011). The ACLJ agrees with the Supreme Court that such state laws do not conflict with federal immigration law. Quite to the contrary, it is clear that states can take action that compliments federal immigration law without violating it. The ACLJ supports other states that desire to protect their borders and their citizens in following the roadmap provided by Arizona's immigration law.

Radical Islam and the United States

The ACLJ also takes seriously the threats from within, such as the danger posed by laws that would fundamentally alter and subjugate the foundation of our great nation. Liberty is a hallmark of American society.[1] It is an inalienable right that is specifically protected under the Constitution.[2] This right to liberty includes freedom to believe, express, and practice one's faith according to one's own conscience.[3] These liberties, however, are not absolute and must operate within the bounds of the law.[4] Therefore, when disagreements and controversies arise in the United States, they are fought in the free marketplace of ideas[5] or resolved in a court of law, governed by the laws enacted by Congress and state legislatures. Those laws indiscriminately govern people of all races, religions, and social classes present in the United States[6] and must comply with the U.S. Constitution, which is "the supreme Law of the Land."[7]

Historically, immigrants to the United States have quickly assimilated themselves into the population and, despite their different countries of origin, have proudly called themselves "Americans." We are now seeing that some Muslim communities in the United States are seeking to be governed by Islamic *Shari'ah*, which is not only foreign to this country and not enacted by the proper authorities, but is also incompatible with the existing law of this land and, in many respects, contrary to natural justice. Islamic *Shari'ah* is different from other religious law in that it covers not only the spiritual aspects of a Muslim's life, but it is also a legal system, a comprehensive code of law governing the total social, political, and economic lives of all Muslims[8] that must be enforced by the state.

Both so-called moderate and radical Islamic groups—capitalizing on the American values of life, liberty, freedom, and religious accommodation—have begun establishing large Muslim communities in the West[9] to implement their religious/political agenda. This is not to say that Muslims are not welcome in the United States; they are. But it is imperative to understand the motivation of fundamentalist Muslims in establishing their communities. The goal of these Islamic groups is *not* to peaceably assimilate into Western society on equal footing with other religious (or non-religious) persons and groups, but to completely dominate the culture in all aspects.[10] It is essential to note that it is impossible to separate Islam's religious and political agendas, as is the common practice in the U.S.; rather, with Islam, there is no such separation.[11] Islam is a *political* religion that accomplishes its ends through political and military means.

Guarding against the infiltration of fundamentalist Islam is vital to preserving our Republic because Islam's ultimate goal is to destroy Western society by establishing an Islamic theocracy operating under *Shari'ah*, which would subject all people to the dictates of Allah and Muhammad. It is crucial that, as Americans, we are not deceived, in the name of freedom and reasonable accommodation of religion, to believe that even the basic principles of *Shari'ah* can co-exist with American law. Moreover, because *Shari'ah* is incompatible with American notions of law and justice, we must ensure that it is barred from receiving recognition in the United States to preserve the liberties and freedoms protected by our Constitution and laws. This is not to say that Muslims cannot live and practice their religion in the United States, for the Free Exercise Clause protects them as it does others. However, they must do so within the system of government established by the Constitution—a system that does not allow for parallel legal systems. The ACLJ encourages states/commonwealths to enact constitutional amendments or statutes to protect the liberties given to us by our forebears by prohibiting consideration and application of legal systems that are incompatible with our own.

To achieve the ultimate goal of bringing the world under Islamic law, Muslims must strive to bring all individuals and all institutions—incrementally and unceasingly—in conformity with Islam. Islamists around the world are influencing financial institutions to conduct their business according to Islamic religious law. The general term used to describe financial institutions that have adopted Islamic principles is "*Shari'ah*-compliant financing" (SCF).[12] SCF poses a direct threat to U.S. national security because Islam requires financial institutions to pay obligatory charitable contributions, a portion of which must be given to "*those fighting for Allah*," including Islamic terrorists.[13] Regulators and individual investors must understand the connection between jihad and SCF in order to address this threat to America.

Fighting Terrorism Worldwide

The ACLJ stands by nations who lawfully combat terrorism within their own borders and worldwide. It is a fundamental principle of international law that a nation may engage in legitimate self-defense. That principle is enshrined in Article 51 of the United Nations Charter and is also recognized as part of customary international law. Israel's current military activities are aimed against Hamas and Hezbollah, two radical Islamic terrorist groups, the former in Gaza and the West Bank and the latter in Lebanon, in response to their unprovoked attacks on Israel and its citizens and armed forces. The ongoing attacks by Hamas and Hezbollah militants upon the state of Israel constitute acts of war sufficient to justify Israel's military response to defend itself and its citizens. Hence, Israel's resort to military force is lawful under international law and necessary to resist acts of terrorism against its citizens.

Conclusion

National Security and waging the war on terrorism are two of the most important issues facing America and the world today. The ACLJ, which has supported the government's efforts to protect our homeland, will continue to engage these issues in the courts and in the court of public opinion.

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[1] THE DECLARATION OF INDEPENDENCE pmbl. (U.S. 1776) ("We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.").

[2] U.S. CONST. amend. XIV ("[N]or shall any State deprive any person of life, liberty, or property, without due process of law . . . .").

[3] U.S. CONST. amend. I ("Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech . . . or the right of the people peaceably to assemble . . . .").

[4] *See* Reynolds v. United States, 98 U.S. 145, 162–67 (1878) (recognizing that citizens of the United States are free to subscribe to any religious belief but that actions flowing from that religious belief, which are deemed harmful to society, may legitimately be restricted by the government).

[5] *See* Abrams v. United States, 250 U.S. 616, 630 (1919) (Holmes, J., dissenting) ("[T]he best test of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out.").

[6] U.S. CONST. amend. XIV ("[N]or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.").

[7] U.S. CONST. art. VI, cl. 2; Marbury v. Madison, 5 U.S. 137, 178 (1803) ("If then the courts are to regard the constitution; and the constitution is superior to any ordinary act of the legislature; the constitution, and not such ordinary act, must govern the case to which they both apply.").

[8] *See* MAWIL IZZI DIEN, ISLAMIC LAW: FROM HISTORICAL FOUNDATIONS TO CONTEMPORARY PRACTICE 36–37 (2004) [hereinafter DIEN].

[9] *See*, *e.g.*, Richard Kerbaj, *Muslim Population 'Rising 10 Times Faster Than Rest of Society*, THE TIMES (Jan. 30, 2009), http://www.thetimes.co.uk/tto/news/uk/article1937685.ece (documenting the extraordinary growth rate of the Muslim population in Great Britain from 2004–2008); Cathy Lynn Grossman, *Number of U.S. Muslims to Double*, USA TODAY (Jan. 27, 2011), http://www.usatoday.com/news/religion/2011-01-27-1Amuslim27_ST_N.htm (predicting that the Muslim population in the United States will grow from 2.6 million people in 2010 to 6.2 million in 2030 and that Muslims will account for more than a quarter of the world's projected 8.3 billion people by 2030).

[10] *E.g.*, TAWFIK HAMID, INSIDE JIHAD: UNDERSTANDING AND CONFRONTING RADICAL ISLAM 111 (2007) (Omar M. Ahmad, Chairman of the Board on the Council of American Islamic Relations, has been recorded as saying that "Islam isn't in America to be equal to any other faith but to become dominant. The Koran, the Muslim book of scripture, should be the highest authority in America, and Islam the only accepted religion on Earth."); *see also* AHMAD IBN NAQIB AL-MISRI, RELIANCE OF THE TRAVELLER: A CLASSIC MANUAL OF ISLAMIC SACRED LAW 603 (Nuh Ha Mim Keller, trans., Amana Publications rev. ed. 2008) (1368) [hereinafter RELIANCE OF THE TRAVELLER] ("The caliph fights all other peoples until they become Muslim . . . ([T]hough according to the Hanafi school, peoples of all other religions, even idol worshippers, are permitted to live under the protection of the Islamic state if they either become Muslim or pay the poll tax . . . .")).

[11] BERNARD LEWIS, THE POLITICAL LANGUAGE OF ISLAM 2–4 (1991) ("When we in the Western world, nurtured in the Western tradition, use the words 'Islam' and 'Islamic,' we tend to make a natural error and assume that religion means the same for Muslims as it has meant in the Western world, even in medieval times; that is to say, a section or compartment of life reserved for certain matters, and separate, or at least separable, from other compartments of life designed to hold other matters. That is not so in the Islamic world. It was never so in the past, and the attempt in modern times to make it so may perhaps be seen, in the longer perspective of history, as an unnatural aberration which in Iran has ended and in some other Islamic countries may also be nearing its end.").

[12] Instead of exchanging money for money—as is the case in traditional, including American, banking systems—Islamic banking, or SCF, operates under a system of asset-backed financing. MUFTI MUHAMMAD TAQI USMANI, AN INTRODUCTION TO ISLAMIC FINANCE 12–13 (2002) [hereinafter ISLAMIC FINANCE], *available at*http://www.muftitaqiusmani.com/images/stories/downloads/pdf/an%20introduction%20to%20islamic%20finance.pdf. Asset-backed financing requires a bank to purchase an illiquid asset before lending a liquid asset (assuming the risk of the commodity purchased), rather than lending liquid money. *Id*. at 13. As the Islamic Bank of Britain describes, "To make money from money is forbidden—wealth can only be generated through legitimate trade and investment in*assets*." *Sharia Finance*, ISLAMIC BANK OF BRITAIN, http://www.islamic-bank.com/sharia-finance/ (last visited Mar. 29, 2011). Only after a bank purchases assets and creates an inventory may a bank sell an asset to a client for a fixed price. ISLAMIC FINANCE, *supra*, at 12–13. The client (buyer) then has an obligation to repay the fixed price. Payments, however, are due at the debtor's leisure because under *Shari'ah*, "there is no concept of time due of money," which means that there can be no penalty for late payments. ISLAMIC FINANCE, *supra*, at 13; *but cf*. RELIANCE OF THE TRAVELLER, *supra* note 10, at 403 (stating that a debtor is obliged to repay the lender upon the lender's spontaneous demand of payment: "If the lender gives the recipient a loan and later meets him in another town and asks for it back, the recipient must repay it if it was gold or silver and the like, though if the loaned commodity was something troublesome to carry, such as wheat or barley, then the recipient is not obliged to pay it back (A: in kind) but is merely obliged to pay back its value"). Because *Shari'ah*-compliant banks are prohibited from lending at interest and cannot make profit that way, *Shari'ah* forces Islamic banks to generate profits in a wholly different manner. Rather than lending at interest, Islamic banks generate profits under the principle of *Musharakah*, which literally means "sharing." ISLAMIC FINANCE, *supra*, at 14–15. *Musharakah*, or profit sharing, views a traditional loan as more of a partnership or joint venture rather than a debtor/creditor relationship. *Id*. at 17. Thus, under Islamic banking, when a debtor needs a loan, the lender has two options: lend at no interest or contract with the debtor to share in his profits (*Musharakah*). *Id*. at 17–18. If the lender chooses to contract with the debtor to share in the profits, however, *he also must share in any losses incurred by the debtor*. *Id*. at 18. Each partner suffers losses according to the amount he invested. *Id*. Thus, as opposed to the free-market model, under Islamic banking/economics, capital and entrepreneur are not separate factors of production. *Id*. at 14–15. Anyone who invests capital—even a lender—assumes the risks incurred by an entrepreneur and therefore shares in both profits and losses.

[13] *Id.* at 272 ("They are given enough to suffice them for the operation, even if affluent; of weapons, mounts, clothing, and expenses.") (emphasis added).