



March 7, 2011

The Honorable Peter T. King  
Chairman of the House Committee on Homeland Security  
339 Cannon House Office Building  
Washington, D.C. 20515

The Honorable Bennie G. Thompson  
Ranking Member of the House Committee on Homeland Security  
2466 Rayburn House Office Building  
Washington, D.C. 20515

***Re: Committee Hearings on the Radicalization of American Muslims***

Dear Chairman Peter T. King and Ranking Member Bennie G. Thompson:

The purpose of this letter is to address questions and concerns you may have regarding the hearings that have been scheduled on the radicalization of American Muslims.

By way of introduction, the ACLJ is a not-for-profit organization dedicated to the defense of constitutional liberties secured by law. Our organization exists to educate the public and the government about the right to freedom of speech, particularly in the context of the expression of political and religious sentiments. In fact, our Chief Counsel, Jay Sekulow has argued numerous cases before the Supreme Court that have become part of the legal landscape in recent years in the area of religious liberty litigation.<sup>1</sup>

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<sup>1</sup>*See, e.g.,* Pleasant Grove City v. Sumnum, Case No. 07-665, 129 S. Ct. 1125 (Feb. 25, 2009) (unanimously holding that a monument erected and maintained by the government on its own property constitutes government speech and does not create a right for private individuals to demand that the government erect other monuments); McConnell v. FEC, 540 U.S. 93 (2003) (unanimously holding that minors enjoy the protection of the First Amendment); Lamb's Chapel v. Center Moriches Sch. Dist., 508 U.S. 384 (1993) (unanimously holding that denying a church access to public school premises to show a film series on parenting violated the First Amendment); Bd. of Educ. v. Mergens, 496 U.S. 226 (1990) (holding by an 8-1 vote that allowing a student Bible club to meet on a public school's campus did not violate the Establishment Clause); Bd. of Airport Comm'rs v. Jews for Jesus, 482 U.S. 569 (1987) (unanimously striking down a public airport's ban on First Amendment activities).

## **THE HEARINGS ON THE RADICALIZATION OF AMERICAN MUSLIMS ARE IMPORTANT TO PROTECTING U.S. NATIONAL SECURITY INTERESTS AND THEY ARE NOT PROHIBITED BY THE U.S. CONSTITUTION.**

The House Committee on Homeland Security (HCHS) was established in 2002 in the aftermath of Islamic terrorist attacks on 9/11 to “provide Congressional oversight for the U.S. Department of Homeland Security and better protect the American people against a possible terrorist attack.”<sup>2</sup> In an effort to fulfill this mandate, HCHS Chairman, Congressman Peter King, has scheduled hearings on the radicalization of Muslims living in the United States. These hearings are necessary because “the homeland has become a major front in the war with Islamic terrorism and it is [the committee’s] responsibility to fully examine this significant change in al Qaeda tactics and strategy.”<sup>3</sup>

While the importance of these hearings to national security interests is undeniable, some critics have questioned whether “a congressional hearing in a secular nation [can] explore whether Islam needs a reformation.”<sup>4</sup> This question is usually raised to turn a national security question into a religious freedom issue to avoid government scrutiny. The ACLJ has been engaged in numerous cases and issues across the nation in which this tactic has been used as a deflection maneuver to shield secular—and in some cases unlawful—conduct under the banner of First Amendment religious freedom. The HCHS should not be concerned with such erroneous arguments in the context of its hearings on national security interests.

The constitutionally protected liberty to practice one’s religion<sup>5</sup> is limited within the bounds of law.<sup>6</sup> The Supreme Court of the United States has explained, “the [First] Amendment embraces two concepts—freedom to believe and freedom to act. The first is absolute but, in the nature of things, the second cannot be. Conduct remains subject to regulation for the protection of society.”<sup>7</sup> Therefore, any conduct by people, or an association of people, that is against U.S. law or threatens U.S. security is clearly subject to the legislative, executive, and judicial powers of our government. Such activities are *not* protected from government action, including a congressional hearing on the matter, simply because there happens to be a purported religious motivation behind the conduct at issue.

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<sup>2</sup>House Homeland Security Committee, About the Committee, <http://homeland.house.gov/about/history-jurisdiction> (last visited Mar. 2, 2011).

<sup>3</sup>Letter from Congressman Peter King to Congressman Bennie Thompson (Feb. 8, 2011), *available at* <http://homeland.house.gov/press-release/king-stands-firm-upcoming-hearings-islamic-radicalization>.

<sup>4</sup>Michelle Boorstein, *Anxiety on All Sides of Upcoming House Hearing on Radicalization of U.S. Muslims*, WASH. POST, Feb. 28, 2011, <http://www.washingtonpost.com/wp-dyn/content/article/2011/02/27/AR2011022703846.html>.

<sup>5</sup>U.S. CONST. amend. I (“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . .”).

<sup>6</sup>*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).

<sup>7</sup>*Cantwell v. Connecticut*, 310 U.S. 296, 303–304 (1940).

It is also important to acknowledge that the decision to limit the scope of the hearings to the radicalization of Muslims in the United States—rather than include other religious groups—was not arbitrary, but was a very practical and necessary categorization based upon the recent terrorist activities in the United States. In recent years, domestically planned terrorist attacks have consistently been committed by those claiming Islamic principles as their motivation. The Times Square attempted bombing, the Zazi plot (which included plans to bomb the Grand Central and Times Square subway stations), the Fort Hood attack, and the Christmas underwear bombing attempt are but a few examples.

Perpetrators of these attacks refer to Islam as their motivation, which stems in large part from the goal of radical Islamic groups to dominate the entire world, especially the infidel West, and implement Islamic law.<sup>8</sup> This aspiration for dominance exists because at the very heart of Islam is the belief in the existence of a single Islamic state and allegiance to Islam, which is “entirely exclusive” of all other allegiances.<sup>9</sup> Consequently, a radical Muslim’s allegiance to the global Islamic state is inherently incompatible with *any* oath of state allegiance, including allegiance to the United States of America.<sup>10</sup>

A recent illustration of this mindset occurred during the trial of Faisal Shahzad (who attempted an attack on Times Square) when the judge asked, “[d]idn’t you swear allegiance to this country when you became an American citizen,” to which Shahzad replied, “I did swear, but I did not mean it.”<sup>11</sup> The Fort Hood shooting provides yet another example. The tension between Major Hasan’s allegiance to Islam and his purported loyalty to the United States came to a breaking point. Rather than uphold his oath of office, Major Hasan felt compelled to follow the tenets of his religion, which he believed permitted him to murder twelve of his “fellow” soldiers.<sup>12</sup> These examples reveal that the *actions* of radical Muslims are motivated by their understanding of Islam. The state, therefore, may (and in fact must) analyze ideologies that purportedly motivate unlawful actions that threaten national security.

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<sup>8</sup>*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* 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 . . .”).

<sup>9</sup>MAJID KHADDURI, *WAR AND PEACE IN THE LAW OF ISLAM* 17 (Lawbook Exch. ed. 2010) (1955).

<sup>10</sup>*See id.* at 172.

<sup>11</sup>Michael Wilson, *Shahzad Gets Life Term for Times Square Bombing Attempt*, N.Y. TIMES, Oct. 5, 2010, <http://www.nytimes.com/2010/10/06/nyregion/06shahzad.html>.

<sup>12</sup>*Army Honors Dead, Searches for Motive in Fort Hood Shootings*, CNN (Nov. 7, 2009), <http://www.cnn.com/2009/CRIME/11/06/texas.fort.hood.shootings/index.html>; Dana Priest, *Fort Hood Suspect Warned of Threats Within the Ranks*, WASH. POST (Nov. 10, 2009), <http://www.washingtonpost.com/wp-dyn/content/article/2009/11/09/AR2009110903618.html?hpid=topnews>.

In 2004, a Department of Justice (DOJ) investigation in the *Holy Land Foundation* cases led to the unveiling of a highly-publicized list of terrorist co-conspirators and joint venturers, as well as a mass of evidence exposing the true purpose underlying fundamentalist Muslim organizations that were posing as charitable 501(c)(3) nonprofit organizations.<sup>13</sup> A key discovery in this investigation was a memorandum containing the plans of the Muslim Brotherhood, a fundamentalist Islamic movement dedicated to resurrecting the true Islamic caliphate (divinely instituted Islamic government) based on *Shari'ah*.<sup>14</sup> The Muslim Brotherhood describes its goals in North America as follows:

The [Muslim Brotherhood] must understand that their work in America is a kind of grand Jihad in *eliminating and destroying the Western civilization from within* and “sabotaging” its miserable house by their hands and the hands of the believers so that it is eliminated and God’s religion is made victorious over all other religions. Without this level of understanding, we are not up to this challenge and have not prepared ourselves for Jihad yet. It is a Muslim’s destiny to perform Jihad and work wherever he lands until the final hour comes . . . .<sup>15</sup>

The DOJ investigation provided a list of now infamous organizations that are associated with the Muslim Brotherhood and were unindicted co-conspirators in the *Holy Land Foundation* cases.<sup>16</sup> This list included groups such as the Muslim Arab Youth Association (MAYA), the North American Islamic Trust (NAIT), the Islamic Society of North America (ISNA), and the Council on American Islamic Relations (CAIR).<sup>17</sup>

The past attacks by radical Muslims and the presence of groups like the Muslim Brotherhood and others in the United States is evidence of an existing danger to the United States. Hence, to analyze and limit the radicalization of Muslims in the United States is precisely within the scope of the HCHS hearings. Chairman King’s decision to schedule these hearings is thus appropriate and timely.

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<sup>13</sup>John Ashcroft, Attorney General, United States Dep’t of Justice, Prepared Remarks of Attorney General John Ashcroft — Holy Land Foundation Indictment (July 27, 2004), *available at* <http://www.justice.gov/archive/ag/speeches/2004/72704ag.htm>.

<sup>14</sup>See BYLAWS OF THE MUSLIM BROTHERHOOD art. 2(E) (“The need to work on establishing the Islamic State, which seeks to effectively implement the provisions of Islam and its teachings.”). For a description of this powerful, religious-political organization, see OLIVER GUITTA, CTR. FOR EUROPEAN STUDIES, MUSLIM BROTHERHOOD PARTIES IN THE MIDDLE EAST AND NORTH AFRICA (MENA) REGION (Sept. 2010), *available at* <http://www.thinkingeurope.eu/images/dbimages/docs/CESMuslimBrotherhoodParties.pdf>.

<sup>15</sup>See MOHAMED AKRAM, MUSLIM BROTHERHOOD, AN EXPLANATORY MEMORANDUM ON THE GENERAL STRATEGIC GOAL FOR THE GROUP IN NORTH AMERICA, SHURA COUNCIL 7 (May 22, 1991), *available at* <http://www.investigativeproject.org/documents/misc/20.pdf> (exhibit of the U.S. DEP’T OF JUSTICE).

<sup>16</sup>See *United States v. Holy Land Found. for Relief and Dev.*, No. 3:04-CR-240-G, ATTACHMENT A List of Unindicted Co-conspirators and/or Joint Ventures 5–6, *available at* [http://www.investigativeproject.org/documents/case\\_docs/423.pdf](http://www.investigativeproject.org/documents/case_docs/423.pdf).

<sup>17</sup>*Id.*

## **CONCLUSION**

HCHS members are encouraged to conduct these hearings with the highest confidence that they are serving the best interests of our nation's security. Moreover, all members should be resolute in asking critical questions that are necessary to ensure that these hearings are successful in producing the answers necessary to effectively prevent future terrorist attacks on American citizens. Therefore, we encourage the Chairman and committee to call—and subpoena if necessary—all witnesses necessary to determine what causes, and how to prevent, radical Islamic terrorist acts directed against the United States.

Respectfully Submitted,

Jay Alan Sekulow  
Chief Counsel

cc: Robert W. Ash, Senior Litigation Counsel for National Security Law