



October 23, 2024

The Honorable Janet Yellen  
Secretary, United States Department of the Treasury

Bradley T. Smith  
Director, Office of Foreign Assets Control

United States Department of the Treasury  
Treasury Annex / Freedman's Bank Building  
1500 Pennsylvania Avenue, NW  
Washington, DC 20220

On behalf of the undersigned organizations, Zachor Legal Institute (“Zachor”), a non-profit civil rights advocacy organization focused on combating antisemitism and terror, hereby submits the following request.

On October 15, 2024, the United States Department of the Treasury (“Treasury”) took a long overdue step in fighting terror by adding the Samidoun Palestinian Prisoner Network (“Samidoun”) and its leader Khaled Barakat to the Office of Foreign Assets Control (“OFAC”) Specially Designated Nationals (“SDN”) list (the “Samidoun Designation”) for their support of the designated foreign terror organization Popular Front for the Liberation of Palestine (“PFLP”).<sup>1</sup>

We applaud and thank Treasury for this critical step in combating terror.

This designation is an important action in light of the spread of Palestinian terror support in the United States and one that Zachor and many of the other signatories hereto have advocated on behalf of for years.

Indeed, since as far back as 2018, Zachor has been alerting the federal government to the workings of a complex network of charities and faux humanitarian campaigns, including the so-called Boycott, Divest and Sanction Movement (“BDS”) that were formed to, and have been active in, providing various forms of material support to designated foreign terror organizations.

Specifically, on July 12, 2018, Zachor sent a prosecution request (the “2018 RICO Letter”) to then-Attorney General Jeff Sessions, outlining the affiliations of various groups that

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<sup>1</sup> Gabe Kaminsky, *Treasury Department Sanctions Group Linked to Palestinian Terrorism*, WASH. EXAMINER (Oct. 15, 2024), available at <https://www.washingtonexaminer.com/policy/foreign-policy/3189782/treasury-sanctions-palestinian-terrorism/>. See, also, <https://ofac.treasury.gov/recent-actions/20241015>

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support and make up BDS and setting forth a detailed analysis of the actions of these groups in relation to a request that they be prosecuted under the Racketeer Influenced and Corrupt Organization Act (“RICO”) for, inter alia, providing material support to the designated foreign terror organizations PFLP, Hamas and Hezbollah in violation of 18 U.S.C. § 2339B.<sup>2</sup>

The 2018 RICO Letter included 65 separate references to Samidoun, not including an entire report on Samidoun provided as an exhibit to that letter.

When no publicly announced action was taken on the 2018 RICO Letter, Zachor followed up with a second request in relation to the involvement of Palestinian terror group affiliates in the 2020 George Floyd riots.<sup>3</sup> Again, the Department of Justice (“DOJ”) took no publicly announced action.

Then, in 2022, Zachor sent another prosecution request to the DOJ (the “2022 PFLP Proxies Letter”), this time under the leadership of Attorney General Merrick Garland, specifically focused on the fundraising and non-financial terror support activities of Samidoun and six other terror affiliates identified below (the “Six Plus One Organizations”).<sup>4</sup> The unlawful support for terror by the Six Plus One Organizations also became the subject of a law review article by Zachor’s founder (the “JASTA Law Review Article”).<sup>5</sup>

The 2022 PFLP Proxies Letter focused on the documented ties between Samidoun and the PFLP but also outlined how the six other faux charities/humanitarian organizations provided the same type of support to the PFLP as Samidoun did. To quote from the 2022 PFLP Proxies Letter:

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<sup>2</sup> Letter from Zachor Legal Institute to Attorney General Jeff Sessions dated July 12, 2018, available at <https://zachorlegal.org/wp-content/uploads/2018/11/Final-DOJ-Letter.pdf?189db0&189db0>. This letter identified BDS affiliated groups including Students for Justice in Palestine, American Muslims for Palestine and the Muslim Students Association as being actively involved in providing material support to foreign terror organizations.

<sup>3</sup> Letter from Zachor Legal Institute to Attorney General William Barr, dated July 8, 2020, available at <https://zachorlegal.org/wp-content/uploads/2020/09/DOJ-letter-re.-BLM-Riots-Sent-to-DOJ-on-July-8-2020-1.pdf>.

<sup>4</sup> Letter from Zachor Legal Institute to Attorney General Garland dated October 25, 2022, available at <https://zachorlegal.org/wp-content/uploads/2022/10/Final-DOJ-Letter-2022.pdf>.

<sup>5</sup> Marc A. Greendorfer and Nadav Machol, *Judicial Aiding and Abetting of Terror*, 43 REV. BANKING & FINANCIAL L. 2024 (forthcoming). This law review article outlines the terror support provided by the Six Plus One Organizations and argues that the Justice Against Sponsors of Terror Act’s aiding and abetting liability provisions apply to the organizations.

*In February 2021, the Israeli Ministry of Defense designated the Seven PFLP Proxies as illegal terrorist groups<sup>6</sup> that act on behalf of the PFLP, an entity that the United States Department of State has designated as a foreign terrorist organization since October 8, 1997.<sup>7</sup> The Seven PFLP Proxies are*

- 1. The Samidoun Palestinian Prisoner Solidarity Network (“**Samidoun**”);*
- 2. The Union of Palestinian Women's Committees (“**UPWC**”);*
- 3. ADDAMEER - Prisoner Support and Human Rights Association (“**Addameer**”);*
- 4. Bisan Center for Research and Development (“**Bisan**”);*
- 5. Al-Haq Organization (“**Al Haq**”);*
- 6. Defense for Children International – Palestine (“**DCI-P**”); and*
- 7. Union of Agricultural Work Committees (“**UAWC**”).*

*The designation of the Seven PFLP Proxies as terror groups was based in part on an investigation and subsequent report from the Shin Bet, Israel’s analog to the United States’ Federal Bureau of Investigation. The Shin Bet relied upon testimony from insiders of at least one of the Seven PFLP Proxies and a corresponding investigation, and while the Shin Bet report has not been made public, parts of it have leaked online.<sup>8</sup> In August 2022, following up on what was disclosed by the insiders regarding the Seven PFLP Proxies being alter egos of the PFLP, the Israeli government raided the offices of a number of the Seven PFLP Proxies to obtain more detailed evidence of their work on behalf of other terror organizations, including the PFLP. Though no further information on the results of the raids has been made public it is likely that through the raids, Israel obtained further details of how the PFLP uses the Seven PFLP Proxies to raise funds, obtain other support and recruit new members.*

*The Seven PFLP Proxies operate across the United States with impunity, participating in events on college campuses and organizing protests in major American cities and worldwide that have on more than one occasion descended into violence.*

*Even though the activities of the Seven PFLP Proxies are well known, the United States has yet to designate the organizations as terrorist entities under relevant laws and*

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<sup>6</sup> Samidoun was designated as a terror organization in February 2021. <https://nbctf.mod.gov.il/en/Pages/SamidounEN.aspx>. UPWC, Addameer, Bisan, Al Haq, DCI-P and UAWC were each designated as a terror organization in October 2021. <https://nbctf.mod.gov.il/en/Pages/211021EN.aspx>.

<sup>7</sup> <https://www.state.gov/foreign-terrorist-organizations/>.

<sup>8</sup> Adam Kredo and Matthew Foldi, *Here’s Why Israel Designated Six Palestinian Charities as Terror Groups*, THE WASHINGTON FREE BEACON (Dec. 6, 2021), available at <https://freebeacon.com/national-security/document-heres-why-israel-designated-six-palestinian-charities-terror-groups/>.

*regulations or, to our knowledge, commence investigations into the terror affiliations and activities of these groups.*

The same factual predicates that led to the Samidoun Designation apply to the six other members of the Six Plus One Organizations (UPWC, Addameer, Bisan, Al Haq, DCI-P and UAWC, collectively being the “Remaining PFLP Terror Proxies”).

The press release issued by Treasury on October 15, 2024 clearly explained the justification for the Samidoun Designation, which is remarkably similar to the analysis outlined in explicit detail in Zachor’s 2018 RICO Letter as well as our 2022 PFLP Proxies Letter:

*Organizations like Samidoun masquerade as charitable actors that claim to provide humanitarian support to those in need, yet in reality divert funds for much-needed assistance to support terrorist groups,” said Acting Under Secretary of the Treasury for Terrorism and Financial Intelligence Bradley T. Smith. “The United States, together with Canada and our like-minded partners, will continue to disrupt those who seek to finance the PFLP, Hamas, and other terrorist organizations.”<sup>9</sup>*

As the JASTA Law Review Article described the interlocks among the Six Plus One Organizations, the operations of one organization are the operations of all related organizations. These organizations play a game of “Whac-A-Mole” with regulators, one organization popping up to take over the activities of any other that has been subjected to legal scrutiny. We’ve seen this happen many times over the years, with the Holy Land Foundation prosecution being the best example of how foreign terror organizations like Hamas simply shift their U.S. fundraising and support operations over to new front organizations when the government shuts down existing front groups.<sup>10</sup>

The 2022 PFLP Proxies Letter described how the PFLP inserts operatives to control the activities of the faux charities/humanitarian organizations, turning them into puppets that are

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<sup>9</sup> Press Release from the United States Department of Treasury (Oct.15, 2024), available at <https://home.treasury.gov/news/press-releases/jy2646>.

<sup>10</sup> See, e.g., Dr. Jonathan Schanzer, *From Ivory Towers to Dark Corners: Investigating the Nexus Between Antisemitism, Tax-Exempt Universities and Terror Financing*, Testimony Before the House Ways and Means Committee (Nov. 15, 2023), available at <https://gop-waysandmeans.house.gov/wp-content/uploads/2023/11/Schanzer-Testimony.pdf> (“Historically, Hamas supporters have abused the U.S. financial system to send millions of dollars overseas. From 1989-2001, one such network raised millions of dollars for Hamas through a Texas-based charity known as the Holy Land Foundation for Relief and Development. In December 2001, U.S. authorities raided HLF and froze its assets. Ultimately, five individuals were convicted and sent to prison for providing material support to Hamas. This network was tenacious, however. Its members created a new entity in a different state and with a different name — but with the same goals, fundraising apparatus, and personnel.”)

controlled directly by the PFLP to engage in wire fraud, money laundering and the provision of material support to foreign terror organizations.

Quoting again from the 2022 PFLP Proxies Letter:

*The testimony of members of one of the Seven PFLP Proxies, and the resulting investigations, provided clear and convincing evidence that the Seven PFLP Proxies have been incorporated into the PFLP's hierarchy and constitute an inseparable part of that designated foreign terrorist organization's operational structure.*

*The publicly available sections of the Shin Bet report on the Seven PFLP Proxies provide explicit information on how the PFLP's self-proclaimed civil society institutions employ fraud and forgery to divert donations that were intended to fund humanitarian operations and funnel them, instead, to support the PFLP's terrorist activities. The Seven PFLP Proxies operate in coordination with each other and also act as a facially humanitarian network that is essential to the conduct of the PFLP's core mission of engaging in terrorism.*

Since the October 7, 2023 Hamas terror attack on Israel, BDS aligned groups have swarmed the United States in support of Hamas, Hezbollah and the PFLP. These groups operate with funding and logistical support from forces seeking to destabilize the United States and turn American streets and campuses into the next terror front. In fact, a recent news report found that representatives from Samidoun were involved in the violent antisemitic protests at Columbia University in support of Hamas.<sup>11</sup>

Moreover, the Six Plus One Organizations ultimately provide material support for the PFLP and likely other terror organizations such as Hamas and Hezbollah.

It is now time for the Remaining PFLP Terror Proxies as well as any BDS affiliate that operates in a similar manner to also be designated by OFAC as SDNs. The Samidoun Designation was only the tip of the terror support iceberg and without further action to disrupt support to designated foreign terror organizations it is guaranteed that the activities once conducted by Samidoun will end up being shifted over to the Remaining PFLP Terror Proxies as well as other elements of BDS.

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<sup>11</sup> Adam Kredo and Jessica Costescu, *The US Sanctioned an Anti-Israel Group for Backing Terrorists. Months Ago, Its Leaders Were Hobnobbing With Columbia University Students*, THE WASHINGTON FREE BEACON (Oct. 17, 2024), available at <https://freebeacon.com/israel/the-us-sanctioned-an-anti-israel-group-for-backing-terrorists-months-ago-its-leaders-were-hobnobbing-with-columbia-university-students/>.



We also draw attention to the need for reform of both the process of adding alter egos to the SDN list and the abuse of fiscal sponsorship rules. As Zachor explained in an October 2023 memorandum sent to the House Foreign Affairs and Ways and Means Committees (attached hereto as Exhibit A and titled “How Designated Foreign Terror Organizations Exploit Loopholes in Anti-Terror Financing Laws and Rules and Recommendations to Close the Loopholes”), foreign terror organizations are sophisticated actors who hijack 501(c)(3) entities through fiscal sponsorship loopholes to raise funds in the United States and use easily created alter egos to evade being identified on sanctions lists.

The undersigned therefore request that Treasury include the Remaining PFLP Terror Proxies to the SDN list.

Sincerely,

A handwritten signature in black ink, appearing to read 'Marc Greendorfer', is centered on the page.

Marc A. Greendorfer  
President of Zachor Legal Institute

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**Exhibit A**

*Memorandum: How Designated Foreign Terror Organizations Exploit Loopholes in Anti-Terror Financing Laws and Rules and Recommendations to Close the Loopholes.*



## **How Designated Foreign Terror Organizations Exploit Loopholes in Anti-Terror Financing Laws and Rules and Recommendations to Close the Loopholes.**

The United States has one of the most robust financial sanctions programs in the world, operated by the Office of Foreign Assets Control (“OFAC”) through its Specially Designated Nationals and Blocked Persons (“SDN”) list.<sup>1</sup> Under applicable law and regulations, US persons are generally prohibited from doing business with any SDN. This program is administered by the Department of the Treasury and more than 20,000 SDNs are included in the sanctions program. By providing lists of individuals and entities that are prohibited from doing business with US persons, OFAC empowers financial institutions to develop their own programs, using the SDN list, to combat unlawful funding of terror groups.

### **SDN Lists—How They Are Used by Financial Institutions to Stop Terror Financing.**

By most measures, the SDN program has been extremely effective and virtually every financial institution has developed methodologies to ensure that they screen customers and transactions to identify SDNs. Even so, there is a major loophole in the SDN program that allows foreign terror organizations to unlawfully raise funds in the United States.

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<sup>1</sup> <https://ofac.treasury.gov/specially-designated-nationals-and-blocked-persons-list-sdn-human-readable-lists>.

While terror organizations are well known and heavily monitored, they are also always evolving to adapt to the laws and regulations that are meant to starve them of financing. Terror groups like Hamas, Hezbollah and the Popular Front for the Liberation of Palestine, all SDNs, are able to evade OFAC's sanctions program by creating or enlisting third party front organizations that purport to be charitable or humanitarian groups but are, in fact, support organs of terror organizations.

The best known example of terror fronts using charities to evade anti-terror financing laws is the Holy Land Foundation, which was successfully prosecuted in 2008 by federal authorities. The Holy Land Foundation, the largest Muslim charity in the United States at the time, raised money for Hamas under the guise of providing humanitarian services and support for the needy but was actually created by Hamas to evade US anti-terror financing laws.<sup>2</sup>

The Holy Land Foundation raised many millions of dollars for Hamas before the United States designated Holy Land Foundation as a Specially Designated Terrorist in 2001, effectively terminating its unlawful operations. However, many other organizations were created to take the place of Holy Land Foundation and OFAC simply has not updated its procedures quickly enough to deal with the problem.

For example, while Hamas is an SDN and thus can't directly raise funds in the United States, all it has to do, and all it has done, is either create successors to the Holy Land Foundation or infiltrate and take control of existing charities to continue fundraising. A charity can be

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<sup>2</sup> <https://www.justice.gov/opa/pr/federal-judge-hands-downs-sentences-holy-land-foundation-case>

created in a day, using an innocuous name and a laudable business plan, and can commence fundraising in short order. In fact, the new charity doesn't even need to go through the process of applying for tax-exempt status; rather, an existing tax-exempt organization can "fiscally sponsor" the new charity and provide the new charity's donors with the tax exempt benefits donors crave. The combination of terror group fundraisers being fiscally sponsored and not being listed as an alias of an SDN has resulted in a serious degradation of the efficacy of U.S. anti-terror financing laws, rules and regulations.

Financial institutions that process payments for charities generally refer to OFAC's SDN list to comply with anti-terror financing laws, but the SDN lists are quite static, meaning that as new terror fronts are created, they generally are not listed on SDN lists, nor are they listed as "aliases" (alternative names that the SDN uses to evade sanctions) of the SDN they support. At the time of the writing of this memorandum, the aliases for Hamas consisted of 11 entities: Islamic Resistance Movement, Harakat Al-Muqawama Al-Islamiya, Students Of Ayyash, Students Of The Engineer, Yahya Ayyash Units, Izz Al-Din Al-Qassim Brigades, Izz Al-Din Al-Qassim Forces, Izz Al-Din Al-Qassim Battalions, Izz Al-Din Al Qassam Brigades, Izz Al-Din Al Qassam Forces and Izz Al-Din Al Qassam Battalions.<sup>3</sup>

The principals of Hamas are also listed as SDNs, so if the reported head of Hamas, Yahya Sinwar, were to try to open a bank account the bank would (presumably) identify him as an SDN and not open the account.<sup>4</sup>

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<sup>3</sup> <https://sanctionssearch.ofac.treas.gov/Details.aspx?id=4695>.

<sup>4</sup> <https://sanctionssearch.ofac.treas.gov/Details.aspx?id=18528>.

## **The Problem with SDN Lists and Terror Financing.**

If Hamas creates a new charity and names it “Foundation for the Protection of Children” has an organization such as Alliance for Global Justice fiscally sponsor the new charity and staffs the new charity with individuals that have never before been named on any of OFAC’s lists, what happens?

While financial institutions are not given specific guidelines on how to comply with OFAC’s sanctions programs,<sup>5</sup> it is common practice for financial institutions to use an automated program to crosscheck individuals, counterparties and entities who either open accounts or use existing accounts for processing transactions against OFAC’s SDN list, including SDN aliases. If there is a match, the transaction or account is blocked and reported.

The problem is that SDNs can rapidly employ new entities or individuals when opening accounts or processing transactions, yet adding new people or entities to the SDN list is a study in bureaucracy. The SDN list can be revised via legislation, but that is an exceedingly slow and unpredictable process. Another way to add an entity or person to the SDN list is by Presidential Executive Order of for the heads of the Departments of Treasury and State, with the Attorney General, to designate the entity or person as an SDN.<sup>6</sup> Outside of a worldwide crisis, government doesn’t move fast enough to counter the comparatively nimble terror organizations.

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<sup>5</sup> The closest Treasury comes to providing guidance is a document titled “A Framework for OFAC Compliance Commitments”, available at <https://ofac.treasury.gov/media/16331/download?inline>.

<sup>6</sup> <https://www.state.gov/executive-order-13224/#:~:text=Designation%20Process&text=OFAC%20also%20adds%20the%20individual,addition%20on%20the%20OFAC%20website>.

It is also the case that there is intentional opacity in OFAC's operations, especially the methodology for identifying and listing SDNs and their aliases. This is necessary to ensure that the system can't be undermined by those who are or should be on the SDN list, but there is also a need for greater dynamism by OFAC to combat the fact that SDNs frequently find ways to evade sanctions.

In addition, the reality of 501(c)(3) fiscal sponsorship abuse amplifies the SDN issue. When organizations allow terror groups to benefit from tax exempt status that wouldn't otherwise be available, it not only lends an air of legitimacy to the terror front groups but also leads to more donations. This, in turn, harms Americans who effectively compelled to subsidize terror groups through tax breaks.

### **Fiscal Sponsorship Basics.**

The process of qualifying for US 501(c)(3) tax exempt status is not terribly complicated, but it can be costly and time intensive and it also requires a level of disclosure to the US government that terror organizations always seek to avoid.

Fiscal sponsorship is one alternative to obtaining 501(c)(3) tax-exempt status, where an existing 501(c)(3) agrees to sponsor another entity or project and provide administrative assistance so the entity or project can receive grants and tax-deductible contributions that it would otherwise be unable to receive. The entity or project may not have to file an application

with the Internal Revenue Service (IRS) or comply with reporting obligations;<sup>7</sup> instead, the fiscal sponsor often handles these matters. Fiscal sponsors typically retain the ability to exercise certain controls over the project or entity sponsored and often receive a fee from the entity or project in exchange for its services.

For the most part, fiscal sponsorship has been approved for use when an organization is in its early stages to allow for growth that will ultimately lead to the organization obtaining its own 501(c)(3) status. Unfortunately, terror groups have seen that fiscal sponsorship also allows them to take advantage of the 501(c)(3) tax exempt status to widen the scope of their own terror fundraising without having to come under the scrutiny of IRS 501(c)(3) reviews. Further, because 501(c)(3) status is known to result in an “... increase in deductible donations as a result of increased visibility of the project”<sup>8</sup>, terror groups also benefit from increased donations under a fiscal sponsorship arrangement.

### **Proposals to Make SDN Lists More Effective and Curb the Abuse of Fiscal Sponsorship by Terror Groups.**

As shown, adding individuals or entities to the SDN list is a complicated process that takes significant time. Because OFAC has to keep many details of the SDN alias designation process confidential there is not much public information on how aliases are designated, but

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<sup>7</sup> There are a number of variations for fiscal sponsorship, from the sponsored project or entity becoming a part of the sponsor to the sponsored project or entity obtaining grants from the sponsor while retaining its independent existence and being obligated to file with the IRS. See, e.g., <https://fiscalsponsorship.com/the-models-summary/>. See, also, Emma Geering, *The Legal Value of Fiscal Sponsorship: A Proposal of New Law*, 72 HASTINGS L.J. 1605, 1615 (2021), available at: [https://repository.uchastings.edu/hastings\\_law\\_journal/vol72/iss5/6](https://repository.uchastings.edu/hastings_law_journal/vol72/iss5/6), <https://www.irs.gov/pub/irs-tege/eotopico83.pdf> and [https://www.irs.gov/pub/irs-tege/tege\\_act\\_rpt11.pdf](https://www.irs.gov/pub/irs-tege/tege_act_rpt11.pdf).

<sup>8</sup> Geering, *supra* note 7, at 1619.

streamlining and expanding the SDN alias program is the most likely means to making the SDN program more effective.

While terror groups are adept at creating front groups, they ultimately retain their own identities. Thus, as long as a terror group like Hamas keeps its identity and structure and as long as it is an SDN, it can be effectively sanctioned if OFAC were to accept reports from third party organizations that specialize in tracking SDNs. OFAC would, of course, have to validate the allegations in the third party reports, but most reports on terror groups already include copious documentation. Once OFAC has validated a report that an organization or individual is a front for an existing SDN, it can then use the alias program to make the SDN list timelier and more actionable.

For example, it is already the case that Hamas is an SDN and the leadership of Hamas are also SDNs. Whenever OFAC is made aware of verifiable information that Hamas has created or taken over another organization to evade sanctions, the alias list for Hamas should be immediately revised to include the identified party or parties to ensure that financial institutions can promptly enforce applicable sanctions.

To close another loophole in anti-terror financing laws and regulations, the IRS must begin scrutinizing the use of 501(c)(3) fiscal sponsorship. At present, there is virtually no oversight of fiscal sponsors and terror groups know this. At a minimum, any group or project that is being fiscally sponsored by an existing 501(c)(3) should be required to inform the IRS of the principals of the group or project, the amount of money received in each year and the

expenditures for the year. This is basic information that every 501(c)(3) is required to provide in its annual Form 990 filing with the IRS and it would provide greater transparency as to the ultimate use of funds that have been granted a federal tax exemption.