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March 26, 2018

Noel Franciso, Esquire
Office of the Solicitor General
950 Pennsylvania Ave., NW
Washington, D.C. 20530-0001

Re: Your Brief in *Sokolow v. PLO, et al.*, 16-1071

Dear Mr. Francisco:

I am writing to you today to respectfully ask you to withdraw the brief that you filed in the United States Supreme Court in the above-referenced case on February 22, 2018, in response to the Court's Order on June 26, 2017, soliciting your views on the pending petition for *certiorari*.

I am making my request specifically based on the 2007 decision, clearly enunciated by the PLO/PA leadership, after consultation with then Secretary of State Condoleezza Rice, to accede to the jurisdiction of U.S. Courts in the ATA cases against them in order to defend the cases on the merits and to address the facts head on and prove that the PLO/PA were being unfairly accused of providing material support for the terrorism that has killed and injured American citizens. The PLO/PA leadership put forward this position in a brief, by the same lawyers who represented them in *Sokolow*, accompanied by declarations under penalty of perjury, from the PLO/PA leadership, in another ATA case in Washington, D.C.[1] and made it clear that this was their position in all ATA cases pending in U.S. courts. The PLO/PA gave these assurances that they would accede to the jurisdiction of U.S. Courts in ATA cases pending against them for the purpose of convincing the court to set aside a default that had been entered against them; but they went even further and vehemently assured the court of their firm "commitment" to fully litigate all such cases on the merits in U.S. courts.[2] The attached materials reflect the PLO/PA decision and representations in no uncertain terms.

It is impossible to understand how your office can now argue that it is fundamentally unfair, as a matter of due process and otherwise, to subject the PLO/PA to the jurisdiction of our courts, when the PLO/PA affirmatively has represented in our courts that they felt it important and in their own best interests to fully litigate the issues on their merits in U.S. courts. Putting aside for the moment the merits of legal arguments on waiver and so forth, it is unfathomable that as a matter of policy and principle, our government would support such a manipulation of the system.

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[1] *Shatsky, et al. v. The Syrian Republic*, 02 cv 2280 (RJL).

[2] *See Id.*, Doc. 77 at 12-17 (attached).

It is crystal clear that in 2007, the PLO/PA made a firm policy decision, after consultation with out Secretary of State, that it was in their best interests to fully litigate all pending ATA cases against them in the U.S. courts, to prove their purported innocence to the U.S. public. The fact that a jury resoundingly rejected their claims on the merits does not then give them license, let alone with your support, to regret and withdraw their consent to jurisdiction.

Along with some colleagues, I filed an *amicus* brief in this case on behalf of The Restoring Religious Freedom Project at Emory University. Earlier in the case, I represented the victims and have represented other American victims of terrorism. I am writing to you first and foremost, however, as a concerned citizen who cares a great deal about the victims in this case, the issues, and, specifically, the viability of the Anti-Terrorism Act.

Here is a brief bit of background on the *Shatsky* case and the evolution of the PLO/PA position on jurisdiction.

The Plaintiffs in *Shatsky* sought redress for the cold blooded terrorist murder of two beloved teenage American girls, blown up in a pizzeria, by a terrorist paid for, recruited, trained, and supplied by the PLO/PA. At the time the case was filed, the PLO/PA was represented by Ramsey Clark. As you might be aware, Mr. Clark always took the position in the PLO/PA cases brought under the ATA that U.S. courts have no jurisdiction. As in other cases, Clark, on behalf of the PLO/PA, let the case go into default by refusing to participate in the process. This policy cost the PA/PLO a great deal of money in other cases, including settlements in at least two cases for over $100 million. In *Shatsky,* a default was entered and Plaintiffs were able to prove damages of approximately $300 million prior to trebling under the ATA.

In 2007, faced with the prospect of a huge default judgment in *Shatsky* and with over $4 billion in potential damages in ATA cases pending against them in U.S. courts, the PA/PLO decided to completely change their approach to ATA litigation in the U.S. They fired Clark and hired a DC firm, Miller & Chevalier, to handle all of their litigation and they moved to vacate the default in *Shatsky*. In doing so, the PLO/PA announced their new strategy of fighting all ATA cases in U.S, courts on their merits. That is what leads me to write to you. The attached documents tell the story in unequivocal terms.

On December 21, 2007, the PLO/PA, represented by the same lawyers who represented the PLO/PA at trial in *Sokolow*, filed a motion in *Shatsky* to vacate the default entered against them. [Doc. 77 - attached]

In the memorandum in support of their motion to vacate, the PLO/PA advised the court that, after consultation with then Secretary of State Condoleezza Rice, on the authority of then

"President" Mahmoud Abbas, the PLO/PA had fired its previous legal team and had decided to change legal strategy altogether. In a Declaration filed with the Court by PA "Prime Minister" Fayyad, the PLO/PA advised the Court that it had concluded that the PLO/PA would from then on litigate all of the ATA cases against them in the U.S. Courts, fully on the merits. In fact, the PLO/PA represented to the court that, after a great deal of consideration, its leadership had concluded that it actually was vitally important to the PLO/PA's own interests to actively litigate the cases on the merits and to present their substantive defenses to an American jury to decide.

In the memorandum in support of their motion to vacate the default in *Shatsky*, counsel for the PLO/PA explains that at first they were somewhat "confused" as to why they were being hauled into U.S. courts and so their responses were a bit chaotic. But starting at the end of 2006, "when President Abbas sought guidance from Secretary Rice about how to respond to the U.S. litigation," President Abbas charged then soon-to-be Prime Minister Salam Fayyad with "responsibility for 'making decisions' for the PLO/PA in connection with the ATA lawsuits then pending against the PLO/PA in U.S. courts. [Doc. 77 at 13]

In referring to all of the pending ATA cases against the PLO/PA in U.S. courts, which the PLO/PA estimated to be seeking collectively "well over $4 billion," Prime Minister Fayyad's Declaration, filed with the court on behalf of the PLO/PA, assured the court that from that point forward, the PLO/PA was "fully committed" to litigating all such cases in the U.S. courts on their merits and no longer would seek to forestall them on jurisdictional grounds.

Fayyad wrote the following under penalty of perjury and on behalf of the PLO/PA, with full authorization:

> **"I have instructed new counsel that the Defendants will participate fully in this and other litigation, in a cooperative manner, including complete participation in the discovery process. I have further instructed new counsel to transmit this commitment to the United States courts. I personally commit to sustain this instruction throughout the effort to litigate these cases. It is my belief there are meritorious defenses to the claims brought in the United States and it is important to the PA to present those defenses. Moreover, it is important to the PA's role in the international community to participate in the legal process, even when it is process brought in the United States for actions that occurred far from the United States. The importance of this was not fully appreciated by the PA government, as a whole, until recently. Now we can act on that**

understanding, and we therefore seek to contest this litigation, fully and responsively." [Emphasis added] [Doc. 77 at 13][3]

The PLO/PA memorandum goes on to explain the PLO/PA's new found recognition of the importance of defending against the ATA cases filed in U.S. courts on their merits, to prove to the American people that the PLO/PA were not really involved in the terrorist acts charged in the various ATA cases and that it was important both to its own standing in the world community to do so and to the best interests of the United States, as agreed in discussions between the PLO/PA and the Department of State. In giving further assurance to the court in *Shatsky* that this position was the official position of the PLO/PA once and for all, counsel submitted a declaration from Ahmad Abdel-Rahman. President Abbas's top political advisor, confirming that this was indeed the PLO/PA commitment and that Fayyad had full authority to speak on behalf of the PLO/PA on this subject.[4] On July 11, 2011, based on the PLO/PA's stated commitment to litigate the merits in ATA cases pending in U.S. courts, the court in *Shatsky*, set aside the default.

In light of these documents demonstrating unequivocally that in 2007, the PLO/PA made a knowing and deliberate official policy decision to consent to the jurisdiction of American courts for purposes of litigating the merits of all ATA cases brought against them, based expressly on a conclusion, reached in conjunction with our State Department, that it was in the best interests of the PLO/PA (and the United States) to do so, how can your office (and the State Department) now take the position that it is unfair to subject the PA/PLO to the jurisdiction of the U.S. courts?

The PLO/PA affirmatively begged for the opportunity to litigate these cases fully on their merits in order to clear their name and prove to the American people after a full trial that they were not involved in the terrorism that has killed and injured so many Americans. But the jury in *Sokolow* resoundingly rejected the PLO/PA's claims on the merits and found that the PLO/PA were directly involved in supporting, facilitating, promoting, and engaging in the terrorist actions at issue which one after another killed American citizens in horrific fashion.

Now, after losing on the merits they demanded a chance to present to an American jury, the PLO/PA reverts back to the jurisdictional argument it promised to abandon and your office and the State Department shamefully support this manipulation and ask the United States Supreme Court to endorse it, effectively deserting the American victims who took the PLO/PA

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[3] Fayyad's full declaration is hereto attached.

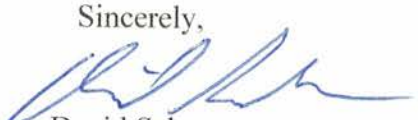
[4] A copy of the Mr. Abdel-Rahman's declaration and a letter from Secretary Rice are attached hereto as well.

up on their offer and endured the emotionally draining reliving of the terror attacks that killed their loved ones.

I would like to give you the benefit of the doubt and believe that you were not aware of the official commitment the PLO/PA gave in *Shatsky* to fully litigate all ATA cases in U.S. courts when you decided to file your brief. If that is the case, I am sure now you will conclude that withdrawing the brief is the only fair and appropriate course of action to take. Any consideration of principle demands it. If you decline to do so, you will make it clear, with all due respect, that your decision was driven by the political considerations many cynically believe to be behind it. That will truly be a very sad commentary on your office, it will badly tarnish the extraordinary reputation your office has enjoyed for so many years, and it will make a mockery of our commitment to hold terrorists accountable for their actions in killing innocent Americans.

With this letter, and based on the attached documents, I am asking you respectfully to withdraw your brief urging the Court to deny the petition for *certiorari* and to take all necessary and appropriate steps to notify the Court of such withdrawal prior to the March 29, 2018 Conference at which the Petition is scheduled to be considered.

Sincerely,



David Schoen

Enclosures