

ORAL ARGUMENT NOT YET SCHEDULED

No. 03-1392

IN THE  
**UNITED STATES COURT OF APPEALS**  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

KAHANE CHAI, et al.,  
Petitioners,

v.

DEPARTMENT OF STATE, et al.,  
Respondents.

PETITION FOR REVIEW OF A FINAL ORDER OF THE SECRETARY  
OF STATE

REPLY BRIEF OF PETITIONERS KACH, KAHANE CHAI, AND  
KAHANE.ORG

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**STATUTES AND REGULATIONS**

All Applicable Statutes Etc., Are Contained in the Briefs for  
Kahane Chai, Kach, and Kahane.org, and United States Secretary of State  
and United States Department of State.

**SUMMARY OF ARGUMENT**

The State Department has conceded that the Administrative Record  
lacks substantial support for most of the allegations of violent terror against

Kahane Chai, Kach, or Kahane.org. The remaining allegation of violence that allegedly occurred in 1993 is time barred and not substantiated. The Administrative Record fails to substantiate that Kach, Kahane Chai, or Kahane.org committed or engaged in terror, terrorist acts, or terrorism on any other basis, as the allegations lack substantial support or fail to comport with any definition of terror under 8 U.S.C. Section 1189. Thus this Court should revoke the Foreign Terrorist Organization designations of Kach, Kahane Chai, and Kahane.org pursuant to 8 U.S.C. Section 1189(b)(3)(D).

As the unclassified Administrative Record fails to support the Foreign Terrorist Organization designations for each of the Petitioners, this Court should not rely on any classified evidence in reviewing the designations of Kach, Kahane Chai or Kahane.org. In the Petition for Review for Kahane Chai, Kach, and Kahane.org, where the unclassified record is insubstantial, basing a decision on classified evidence violates the due process rights of each of the Petitioners.

Kach, Kahane Chai and Kahane.org made a timely request to obtain the Administrative Record and participate in the designation process pursuant to the holding of National Council of Resistance of Iran v. Department of State , 251 F.3d 192 (D.C.Cir. 2001). By failing to honor the

request, on unsupportable grounds, the State Department violated the due process rights of Petitioners causing substantial and continuing harm.

The State Department's stated reason for only designating websites of the only Jewish designated organization does not nullify the religious discrimination against Petitioners. Other designated organizations, characterized by people of other races and religions, also have websites – yet none of the websites of the other organizations were designated as Foreign Terrorist Organizations.

By designating Kahane.org, a website only engaged in protected free speech activities, and not terror, terror activities, or terrorism, the State Department violated the First Amendment rights of Kahane.org. Kahane.org is entitled to the same protection of the First Amendment no less than if it was another medium of free speech.

## **ARGUMENT**

### **I. The State Department Concedes that the Administrative Record Fails to Substantiate that Kach, Kahane Chai, or Kahane.org Committed Violent Terror Since 1993. Remaining Allegations of Terror, Including 1993 allegation, Are Unsubstantiated Or Do Not Comport To Definitions of Terror**

#### **A. The Secretary Concedes That The Administrative Record Does Not Substantiate Most Allegations Of Violent Acts**

In their 2004 responses to the unclassified material, and in their Brief, Kach, Kahane Chai, and Kahane.org challenged the allegations in the Administrative Record as “contradictory, inaccurate, and vague”. (Petitioners’ Brief (“Brief”) at 9).

In the government’s Summary and Analysis of Materials Submitted by Kach, Kahane Chai, and Kahane.org, the State Department essentially agreed that central allegations contained in the Administrative Record were weak (examples: “It is also true that the record contains conflicting information on Federman’s relationship to Kahane Chai/Kach at the time of his arrest....Even assuming, arguendo, that Kahane Chai did not participate in the [girls’ school] attack....” (KAH03-37 at 661); “even if it is assumed that Kahane Chai did not participate in these [boys’ school, three other

attempted bombings, shootings in Ramallah and Hebron] attacks....” (Id.); “But the administrative record does not attribute this act [the Goldstein killings] to Kach or Kahane Chai.” (Id. at 660).

Yet in the Brief for Respondents (“Response”), the State Department admits that almost every allegation of violence found in the Administrative Record lacks substantial support, in either the classified or unclassified version: **“After considering material submitted by petitioners, the Analysis prepared for the Secretary did not rely on this evidence. The Analysis engaged in a discussion of the relevant classified information. AR (Classified) 660-661. See also AR (Classified) 478-479, 505, 513-515, 659.”** (Response at 38).

In their Brief (as well as their 2004 responses to the State Department unclassified material), Petitioners Kach, Kahane Chai, and Kahane.org identified six acts of alleged terror that were mostly repeated throughout the Administrative Record.<sup>1</sup> Of these allegations, five involved violence and the sixth concerned verbal attacks. (Brief at 9-22). Petitioners maintained they were not involved in any of the violent incidents, nor were the allegations substantiated in the Administrative Record. As to the verbal attacks,

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<sup>1</sup> The 1993 West Bank attacks allegation is found only in one sentence in one source document (KAH03-2 at 401) and repeated in the Summary (KAH03-33 at 531) and Analysis (KAH03-37 at 662).

Petitioners maintained that the incidents were either not substantiated or constituted First Amendment activity. (Id.)

Kach, Kahane Chai, and Kahane.org identified the five alleged acts of violent terror as the February 1994 massacre at the Tomb of the Patriarchs in Hebron (Baruch Goldstein killings); the April 2002 attempted bombing of a girls school; bombing at a boys school and planting of three other bombs; West Bank shootings that left seven dead and nineteen injured; and the 1993 West Bank attacks which left four Palestinians dead and two wounded. (Id. 9-16).

The State Department now agrees with Kach, Kahane Chai, and Kahane.org that most of the violent allegations found in the Administrative Record cannot support Petitioners' designations. (Response at 38). The alleged acts of violent terror that the State Department abandoned as grounds for the designations include: 1) the attempted bombing of the girls school; 2) the Palestinian boys' school bombing and planting of three other bombs; 3) the seven shooting deaths and nineteen injured in Ramallah and Hebron (West Bank); and now, 4) the arrest of some yeshiva students "on suspicion of involvement in terrorist activity." (Id. at 38-39). The State Department had already admitted that neither Kach, Kahane Chai nor Kahane.org were

involved in the 1994 Goldstein killings. (Response at 36 (citing the Analysis, KAH03-37 at 660)).

**B. Remaining Allegation Of Violence, The 1993 Attacks, Is Expired, Lacks Substantial Support In The Administrative Record, And Is Based On Contradictory Records**

Only one allegation of violence remains, the 1993 West Bank attacks which left four Palestinians dead and two wounded, to support the designations. (KAH03-37 at 660). The Response places credence on the fact that an “independent think tank” held Kach and Kahane Chai accountable for the 1993 attacks. (Response at 18). Yet the 1993 allegation should not be considered, is not substantiated, and is based on contradictions.

As a threshold matter, the 1993 allegation should not be considered as it is based on expired material. The State Department stated that materials from the earlier designation years of 1997, 1999, and 2001 were expired and would not be considered as part of the de novo review of the 2003 designations. (KAH03-35 at 559). To protect the record, Kach, Kahane.org, and Kahane Chai also note the allegation is ambiguous, contradictory, and conclusory.

The allegation is that, “In 1993, **the groups** claimed responsibility for several attacks in the West Bank, in which four Palestinians were killed and

two wounded.” (KAH03-2 at 401, **bolding added**). The source document discussing the 1993 incident referred to three named groups, including “Kach”, “Kahane Chai”, “Eyal”, as well as “a number of smaller groups”. (KAH03-2 at 401). (Eyal is not alleged to be an alias of Kahane Chai, Kach, or Kahane.org. (KAH03-35 at 557-558). The source document does not specify which groups claimed responsibility.

The source document that merely states “the groups claimed responsibility” contradicts the records which summarize the source document. The Summary specifically says “Kach” claimed responsibility, (KAH03-33 at 531), while the Analysis states “Kach and Kahane Chai” claimed responsibility. (KAH03-37 at 662). Yet neither the Summary, (KAH03-33 at 531), nor Analysis, (KAH03-37 at 662), mention “Eyal” or the “number of smaller groups”.

In turn, the Summary and Analysis call into question the basic premise that Kach or Kahane Chai were involved at all in the 1993 attacks.<sup>2</sup> The source document implies that the same groups responsible for the 1994 Goldstein killings were also responsible for the 1993 attacks. (KAH03-2 at

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<sup>2</sup> This factual argument, that the Summary and Analysis records discredit the “independent think tank” document, source document KAH03-2, was not presented in Petitioner’s Brief. Petitioners believe the argument is legitimately raised in reply to the government’s declaration of the trustworthiness of the think tank’s document.

401). Yet the government makes clear that none of the Petitioners were involved with the 1994 killings, “The Analysis stated that the Summary ‘does not attribute this act [Goldstein’s killings] to Kach or Kahane Chai.’ AR 660.” (Response at 17).

Each of the Petitioners denies committing any of the murders. (Brief at 16). Petitioners note that when the allegation occurred, no terrorism list existed, (KAH03-29 at 493-495; Brief 16), and that Kahane Chai and Kach were not considered aliases until 2001.

Thus as the 1993 allegation is expired, ambiguous, and contradicted, and the State Department has conceded that the other allegations of violence lack substance, there are no allegations of violence to support the Administrative Record.

### **C. Evidence of “Retaining The Capability and Intent” Lacks Support In The Administrative Record**

The State Department claims that various allegations of words or conduct by Kach, Kahane Chai, or Kahane.org show that each of the Petitioners retain the capability and intent to engage in terrorist activity and engages in terrorist activity. The claims lack merit. Below, Kahane Chai, Kahane.org and Kach discuss the State Department’s claims:

**(1) Praise of Goldstein's Actions.** A primary piece of evidence for the State Department is that supporters of Kach, Kahane Chai, or Kahane.org allegedly praised the killings by Baruch Goldstein. Indeed, Goldstein or the 1994 killings are mentioned as early as page 2 in the Response, and then on pages 3, 12, 13, 14, 17, 21, 35, 36, as well as throughout the Administrative Record.

The State Department asserts that Kach, or Kahane Chai, or Kahane.org praised Goldstein by allegedly advertising or making a camp visit to his grave, (Response, examples at 14, 17, 36), and making statements in support of the 1994 killings, (Response at 12-13). According to the government, this alleged praise demonstrates a belief that translates into intent and capability.

“Kahane Chai’s endorsement of Goldstein’s terrorism shows that the group believes in anti-Arab terrorism and terrorist activity, and is therefore fully consistent with other evidence in the record demonstrating that it has itself engaged in such conduct and possesses the capability and intent to engage in such conduct.” AR 660.

Response at 17.

The government seems to make the assertion that belief in violent terror is on par with violent terror and thus demonstrates capability and intent to act violently. This assertion equates belief in violence with violence itself. Yet, the State Department has conceded that the

Administrative Record fails to substantiate that Kach, Kahane Chai, or Kahane.org committed most of the violent terror acts ascribed to them. (Response 37-39). The remaining allegation of violent terror, the 1993 attacks, is time barred and not substantiated. Thus, not having committed violent terror in the past, Petitioner's alleged endorsement of Goldstein's killings cannot imply future violent terror.

As the Administrative Record cannot substantiate that any of the Petitioners engaged in any violent terror, then Kach, Kahane Chai, and Kahane.org cannot be said to possess the capability and intent to engage in violent terror.

**(2) Israeli police closure of the alleged Kach office.** The Response cites the closure of the alleged Kach office in the Shmu'el Hanavi neighborhood of Jerusalem as evidence that Kach, or Kahane Chai, or Kahane.org retains the capability and intent to engage in terrorist activity. (Response at 20, 31). The Response quotes the Summary,

“The ‘Closure and Attachment Order’ under the Israeli Prevention of Terrorism Act states that the Kach office serves as a base for the activities of a terrorist organization.” AR 539.

(Response at 31).

But for the closure of the office to substantiate capability and intent to engage in terror, the activities occurring within the alleged Kach office must

comport to the definitions of terrorism under 8 U.S.C. Section 1189(a)(1).<sup>3</sup> If people were inside the office and making signs, for instance, that would not comport to the required definitions of terrorism.

The evidence from the source records themselves show that the activities do not constitute terrorism. The Israeli police found a letter opposing the appointment of a judge, discs made to disseminate the group's message, and material constituting "incitement to racism". (KAH03-26 at 486.) Letter writing, disc making, and material making, even that which incites racism, does not qualify as terrorism under any of the 8 U.S.C. Section 1189 definitions. Therefore, closure of the alleged Kach office does not provide evidence that Kach, Kahane Chai, or Kahane.org possess the capability and intent to engage in terrorism or terrorist activities.

**D. Administrative Record Lacks Substantial Support for Terrorist Activity under 8 U.S.C. Section 1182(a)(3)(B)**

**(1) Alleged threats against Shin Bet Director.** The Administrative Record cannot substantiate allegations that Kach, Kahane Chai, or Kahane.org threatened the Shin Bet Director or any other security unit.

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<sup>3</sup> Petitioners did not make this argument in their Brief, that is, construing the definitions of terrorism. Petitioners respectfully submit that the Court should consider these definitional arguments, as the government has now abandoned most of their allegations concerning violence. Comporting to the definitions of terrorism is fundamental to the determination of this case, thus providing extraordinary circumstances for consideration.

These allegations stem from the government's summarizing of three documents KAH03-20, KAH03-21 and KAH03-22.

Document KAH03-20 concerns alleged protests by Kach members against a Shin Bet officer concerning the detention conditions of Bat Ayin members detained in connection with the attempted school bombing case. (Id. at 467-468). Bat Ayin is not an alleged alias of Kahane Chai, Kach or Kahane.org. (Response, Addendum at 20-21). The alleged protest occurred in a settlement located in Judea and Samaria.

Document KAH03-21 concerns threats received by the Jerusalem District Police to drop the investigation of the "Jewish Terrorist Squad case". (Id. at 470).

Document KAH03-22 concerns a newscaster's report of alleged threats against Prime Minister Sharon.

From these documents among other things, the government contends that (a) Kahane Chai, Kach or Kahane.org (b) threatened a Shin Bet Director and "Shin Bet (Israeli Security) officials" (c) to drop the investigation of (d) the Kahane Chai members suspected in the school bombing case. (Response at 32-33). The source documents do not substantiate these allegations. It is clear the government has confused the allegations in the source documents.

(a) No source document alleges that Kahane Chai, Kach or Kahane.org threatened anyone in regard to the attempted school bombing case. Document KAH03-20 alleges that Kahane Chai, Kach or Kahane.org protested in a settlement in Judea and Samaria the detention conditions of Bat Ayin members detained for the attempted school bombing case.

(b) No Shin Bet Director or “Shin Bet (Israeli Security) officials” were threatened. Threats were allegedly made against the Jerusalem Police Department. (KAH03-21 at 470). The Shin Bet Director allegedly “claimed” that “Kahanists” made threats against Prime Minister Sharon. (KAH03-22 at 473).

(c) No source document alleges that Kahane Chai, Kach or Kahane.org threatened any officials to drop the investigations of the attempted school bombing. (KAH03-21 at 470). As to threats allegedly received by the Jerusalem District Police, no person or group was identified for allegedly threatening the Jerusalem District Police to drop the attempted bombing investigation. (Id.).

(d) No source document alleges that Kahane Chai, Kach or Kahane.org were suspects in the attempted school bombing case. Document KAH03-21 concerns the “Jewish terrorist squad case”. (Id.) Document

KAH03-20 identifies the Jewish terrorist squad as being “from Bat Ayin”.  
(Id. at 467).

The Response quotes the source document that “in some of the settlement’s households discussion groups have been convened for attacking the officer.” (Response at 33). But other than referring to “settlement’s households” the report does not state that “Kach” members convened or even attended those meetings. (KAH03-20 at 468). Furthermore, aside from its geographical location in Judea and Samaria, the settlement itself is not named. There is no evidence that every household, or any household is populated with members of Kach, Kahane Chai, or Kahane.org. In fact the Shin Bet Officer who is the object of the protests lives in the settlement and he, most likely, is not a member of Kach, Kahane Chai, or Kahane.org.

## **(2) First Amendment Activities Do Not Constitute Threats**

The Response quotes the Summary that

...Kahane Chai leaders met to “launch a campaign against Prime Minister Sharon in reaction to his acceptance of the ‘road map’ for an Israel-Palestine peace settlement.” AR 537. The campaign was to be “similar to the one waged against the late prime minister Yitzhaq Rabin.” AR 457.

Response at 33.

The Summary, KAH03-33 at 537, and the Response at 33, are both based on source document KAH0-17. The source document states that the

“campaign” included activities such as a demonstration, holding up posters (with sayings such as “The Road Map Leads to Hell”), and handing out pamphlets criticizing the prime minister. (*Id.* at 457-458). Even Likud members planned on attending protests against Sharon.

The Response also noted that there was a threat against the life of Prime Minister Sharon attributed to “Kahanist extremists” and others. (Response at 33.) Due to the circumstances under which the alleged threat was received, Kahane Chai, Kach and Kahane.org challenge the alleged threat as not credible and insubstantial. (KAH03-22 at 473; Brief at 18-19).

As well, not all followers of Rabbi Kahane were affiliated with Kach, Kahane Chai, or Kahane.org – or any other organization promoting Rabbi Kahane’s teachings. Document KAH03-2 states that Rabbi Kahane had “an unknown number of **unaffiliated** followers and supporters.” (*Id.* at 401, **bolding added.**) Thus, an alleged threat from a “Kahanist” is not synonymous with a threat from Kahane Chai, Kach, or Kahane.org.

The response seeks to attribute all the government’s allegations of threats to “Kahanists”. (Response 33-34). In fact, the government asserts that Kahane Chai, Kach or Kahane.org is responsible for the actions of anyone who espouses Kahanist views, perhaps even holding Petitioners responsible for the assassination of Rabin. (Response at 34).

This goes too far. In fact, Rabbi Kahane had many followers and supporters from around the world, (KAH03-02 at 401, KAH03-26 at 484), as well as sympathizers (KAH03-26 at 484, KAH03-08 at 420). Holding Kahane Chai, Kach or Kahane.org responsible for the actions of everyone who identifies with the teachings of Rabbi Kahane is akin to holding the United States government liable for the actions of democratic regimes from around the world.

**E. The Administrative Record Lacks Support That Kahane Chai, Kach or Kahane.org Are Aliases Of Each Other Or The Remaining Groups That Are Designated**

The Administrative Record provides evidence that Kahane Chai and Kach are presently considered to be two separate entities. A source document, the Center for Defense Information document dated October 1, 2002, provides evidence that Kahane Chai and Kach are distinct groups. The document discusses “an extremist group unaffiliated with Kach or Kahane Chai” which seems to imply Kach and Kahane Chai are separate groups. (KAH03-2 at 402). In fact, “The groups have an overlapping membership of several dozen core members, as well as an unknown number of unaffiliated followers and supporters.” *Id.* at 401. The document’s

statement that the groups have a partially “overlapping membership” also implies two separate groups.

In determining whether these groups are aliases of each other, the question is whether one controls and dominates the other. National Council of Resistance of Iran v. Department of State, 373 F.3d 152, 158 (D.C.Cir. 2004). In their Brief, Kahane Chai, Kach and Kahane.org provided evidence of how their historical, organizational and philosophical differences established their independence. (Brief at 23-25.)

An important part of the government’s contention that Petitioners are one and the same is their theory that Kahane Chai, Kach and Kahane.org simply engage in renaming their groups to evade being listed as Foreign Terrorist Organizations. (Response at 27-28).

The FBI Declaration states: “FBI investigation has determined Guzofsky simply changes the names of his groups, newsletters, or fundraising entities, after they have been designated as being aliases for Kahane Chai/Kach in the Secretary of State’s Foreign Terrorist Organization designation.” AR 505-505.

(Response at 27).

Yet, Kahane Chai, Kach and Kahane.org provided responses in June 2004 to the State Department’s unclassified material and showed that there was no basis for designating one of the alleged aliases (a website Kahane.net). In fact, that alleged alias, as of April 2002, belonged to a group

antagonistic to Kahane Chai, Kach and Kahane.org. (KAH03-36 at 624-634). Clearly, the government's theory that the alleged aliases simply change names is flawed – it leads to wrong results. This is borne out by the State Department's subsequent removal of Kahane.net from the alias list. (Response at 19, footnote 5; Brief at 24, footnote 3.)

The Response deals with other issues concerning the Internet and websites, such as design of webpages, political advocacy through email, hyperlinks, and content. (Response at 29). Like newspapers and magazines, websites contain a plethora of material that changes regularly, including advertising. Petitioners submit that selectively choosing material may lead to overly broad conclusions.

The evidence as a whole undermines the proposition that Petitioners are aliases.

#### **F. Administrative Record Does Not Support Allegations of Solicitation**

In the Summary, the State Department alleges that Kahane Chai, or Kach or Kahane.org solicited individuals for membership in a terrorist organization or to engage in a terrorist activity. As evidence of this allegation, the Summary alleges that Kahane Chai or Kach or Kahane.org advertised a camp that would include a pilgrimage to visit Baruch

Goldstein's grave. (KAH03-33 at 538). However, the source documents upon which this solicitation allegation is based do not mention any notion of solicitation. (KAH03-4 at 406, KAH03-5 at 408).

The Summary also alleges that Kahane Chai, Kach, and Kahane.org solicit material support for a terrorist organization. The Summary alleges that Kahane.org, a website, solicited funds by offering merchandise such as T-shirts and books for sale and by seeking donations. (KAH03-33 at 538). However, the Summary offers no evidence that anyone could actually make a donation or buy any merchandise from the website.

In fact, a source document, an FBIS memorandum states that Kahane.org solicits donations and sells various merchandise. (KAH03-08 at 419-420). However, the FBIS document that purported to analyze Kahane.org, provides no evidence that anyone could actually effect a sale or tender a donation. (Id.) No physical address is mentioned to which to send cash or a check. The writer of the report does not state that he or anyone else tried to make a donation or tried to effect a purchase by credit card or any other payment mechanism (Id.)

Therefore, since there's a lack of evidence that anyone could buy any merchandise or make a donation, then the government has not provided evidence that Kahane.org was soliciting material support.

## **II. Use Of Classified Evidence Violates Due Process Rights**

### **A. Kach, Kahane Chai, And Kahane.org Incorporate And Adopt Section I For The Argument Below**

### **B. Petitioners Kach, Kahane Chai, And Kahane.org Submit That Each Of Their Due Process Rights Will Be Violated By A Decision Based On Classified Evidence To Which None Of The Petitioners Had Any Access**

The government contends that this Court's precedent is to deny Petitioners, such as Kach, Kahane Chai, and Kahane.org, the right to see the classified evidence. (Response 44-45). But any such precedent is based on a line of cases in which the unclassified evidence was overwhelming, thus of limited value to the present case.

Abourezk vs Reagan, 785 F.2d 1043, 1061 (D.C.Cir. 1986), sets forth the due process standard "that a court may not dispose of the merits of a case on the basis of ex parte, in camera submissions." (Id. at 1060-1061). The Court in People's Mojahedin Organization of Iran vs Department of State, 327 F.3d 1238 (D.C.Cir. 2003) discussed Abourezk and found that the Abourezk due process standard was not required in litigation under 8 U.S.C. Section 1189. (Id.). Yet People's Mojahedin Organization of Iran concerned

a case in which the unclassified information was substantial, and on its own supported the foreign terrorist organization designation. (Id. at 1243-1244).

Indeed, the Court found that the People's Mojahedin Organization of Iran had itself admitted to attacks with mortars against government offices, the military and security forces; assassination of a former prosecutor and killing his body guards; killing a military adviser; and other attacks. (Id. at 1243).

The Court in People's Mojahedin Organization of Iran left open the possibility that in a case where the classified evidence is necessary to substantiate the administrative record, it might be an error to deny access of the classified information to a designation litigant: “However, even if we err in describing the process due, even had the Petitioner been entitled to have its counsel or itself view the classified information, the breach of that entitlement has caused it no harm....the unclassified record taken alone is quite adequate to support the Secretary’s determination.” (Id.).

Petitioners Kach, Kahane Chai, and Kahane.org respectfully submit that the unclassified record does not establish their designations and thus the Abourezk due process standard applies. The State Department has already conceded that the administrative record does not support most of the allegations of violence. (Response 38-39). The remaining allegation, from

1993, is time barred and not substantiated against Petitioners. The other allegations of terror lack substance or fail to comport to any definition of terror under 8 U.S.C. Section 1189.

Thus Kahane Chai, Kach, and Kahane.org respectfully submit that this Court would violate each of their due process rights by deciding the case based on classified information. The Petitioners respectfully submit that this Court should exclude the classified material.

### **III. Failure Of The State Department To Comport With National Council of Resistance of Iran Violated Due Process Rights of Petitioners**

Pursuant to National Council of Resistance of Iran, 251 F.3d 192 (D.C.Cir. 2001), an organization considered for imminent designation must be provided an opportunity to request, receive, and comment on the Administrative Record. (Id. at 192, 209). The government asserts it complied with the due process requirements when it sent out a letter of notice to five individuals it considered representatives.

In fact, the government failed to honor the due process that is constitutionally mandated. The government sent out a notice letter dated September 3, 2003. (KAH03-35 at 547-548). The government sent the letter to Fern Sidman whom it considered a representative of Kahane Chai, Kach

or Kahane.org. “We believe that you might represent Kahane Chai (also know as Kach and other aliases) in the United States.” (Id. at 548.)

The letter provided Ms. Sidman an opportunity to request and receive the unclassified Administrative Record. (Id.) Ms. Sidman was instructed to request the record within ten days of receiving the notice letter. (Id.) The express language of the notice letter only instructed Ms. Sidman to make a timely written request in order to participate in the National Council of Resistance of Iran process. (Id.) The notice letter did not instruct nor require Ms. Sidman to identify herself as a representative of Kahane Chai or one of its alleged aliases.

**If you or another representative of Kahane Chai (also known as Kach and other aliases) would like to participate in the process prescribed...you or other such representative(s) must notify he Secretary of State in writing....**

(Id. at 548, bolding added.)

It makes sense that the letter did not require Ms. Sidman to identify herself as a representative as the notice letter was written to Ms. Sidman as a representative: “We believe that you might represent Kahane Chai....” (Id.)

The notice letter further explained that if Ms. Sidman made a timely request, she would receive the Administrative Record. Again, the express language of the notice letter contained only one instruction: to make a timely

request. Again, the notice letter included no requirement or instruction to identify herself as a representative.

**If you or another representative of Kahane Chai (also known as Kach and other aliases) submit a timely notice to the Secretary of State, the Secretary will deliver to you as petitioner(s) an unclassified version of the administrative record(s)....**

(Id., bolding added.)

Ms. Sidman did indeed choose to participate in the National Council of Resistance of Iran process, and made a timely request, (Response at 41), through her attorney, Mr. Samuel Abady. Mr. Abady requested the letter as her attorney and on her behalf. “I am counsel to Fern Sidman.” (KAH03-36 at 569).

Clearly, Mr. Abady was representing Ms. Sidman in her capacity as a representative of Kahane Chai or one of its alleged aliases. (1) Mr. Abady’s letter was addressed to “William P. Pope – Acting Coordinator for Counter-Terrorism”, who signed the notice letter. (2) Above the greeting to Mr. Pope, Mr. Abady’s letter states: “Re: Proposed Designation of Jewish Activist Groups as Purported Foreign Terrorist Organizations”. (Id.) (3) In the first paragraph, after identifying himself as representing Ms. Sidman, Mr. Abady details how he was comporting to the instructions in the notice letter.

Today, I received your letter dated September 3, 2003, regarding the above. Ms. Sidman retrieved your letter from the Post Office on September 12, 2003, as indicated on the Return Receipt signed by her and presumably returned to you. Hence, this letter is being dispatched within the ten-day period from my client's date of receipt, as requested on the second page of your letter.

(Id.).

Furthermore, Mr. Abady's letter describes Ms. Sidman's involvement with the groups intended for designation. "Moreover, it is my client's position that all of the named entities are legitimate, Jewish activist organizations engaged in constitutionally protected conduct..." (Id. at 570). Finally, Mr. Abady requests the Administrative Record on behalf of Ms. Sidman. "Pursuant to National Council of Resistance of Iran v. Department of State, 251 F.3d 192 (D.C.Cir.2001), demand is hereby made that the Secretary of State disclose any and all material..." (Id.).

The State Department responds that Mr. Abady's letter was timely but defective in that Mr. Abady did not identify himself as a "a representative of the tentatively designated entities". (Response at 41). The Response further states that only an "'organization' can challenge a designation. See 8 USC § 1189(a)(4)(B)." (Id.). This notion finds no basis in, and completely disregards, the September 3, 2003 notice letter.

It is understandable that the State Department maintains that Ms. Sidman did not make a proper request to participate. For the State

Department to assert otherwise is an admission that it failed to comport with National Council of Resistance of Iran and has violated Kahane Chai's, Kach's and Kahane.org's due process rights.

The State Department further responds that any failure to follow the requirements of National Council of Resistance of Iran was harmless in that the State Department still redesignated Petitioners after a de novo review. (Response 42-44).

Petitioners experienced, and continue to experience, substantial harm. The extended review itself hurt Kach, Kahane Chai, and Kahane.org by causing over a year's delay in having their case heard by the Court.

On January 24, 2004 the State Department provided Mr. Abady and attorney Kenneth Klein with copies of the administrative record (KAH03-35 at 555, 558; Response at 42).<sup>4</sup> An accompanying letter stated that the redesignations had already been made, but the State Department would conduct a de novo review after considering material from Kach or Kahane Chai or Kahane.org. (Id.). Petitioners submitted responses to the Secretary in February 2004. (KAH03-36 at 585-620). In May 2004, the State Department invited Petitioners to file additional responses (Government's

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<sup>4</sup> On Oct. 1, 2003, Mr Kenneth Klein, Esq. requested the administrative record (KAH03-36 at 571) on behalf of his client, a U.S. citizen who represents Kach.

May 7, 2004 Motion For Extension Of Time To File Unclassified Administrative Records, page 2). Petitioners did so in June 2004. (KAH03-36 at 621-654).

This Court first ordered the State Department to file the unclassified record within thirty days of April 8, 2004. (Order April 8, 2004). The Court issued at least four more Orders ordering the State Department to file the unclassified record within thirty or less days of the issued Order (Orders of June 7, July 12, August 5, December 10, 2004).

The government filed numerous motions for extensions of time to file the unclassified Administrative Record. Several were filed unopposed in May 7, 2004, June 23, 2004, July 22, 2004 (each Government motion was entitled “Motion For Extension Of Time To File Unclassified Administrative Records”).

Petitioners then began questioning the purpose of the delays. Petitioners opposed additional extension motions dated August 25, 2004, September 24, 2004, October 25, 2004, November 24, 2004 (each Government motion was entitled “Motion For Extension Of Time To File Unclassified Administrative Records”).

Petitioners filed motions opposing the government requests for additional extensions September 8, 2004, October 6, 2004, and November 3,

2004.<sup>5</sup> In the same motions, Petitioners also moved for summary review to set aside the designations on the basis that the delays in filing the Administrative Record were prejudicing Kach, Kahane Chai, and Kahane.org and violating the constitutional requirements of National Council of Resistance of Iran, 251 F.3d 192 (D.C.Cir.2001).

On December 23, 2004 the State Department filed the unclassified Record including the decision to maintain the designations of Kach, Kahane Chai, and Kahane.org as FTOs (“Administrative Record Volume 2 (Unclassified Version-Sealed Material Deleted”). Yet the December 23, 2004 version of the record was missing pages. A corrected version was not filed until March 3, 2005 (“Administrative Record Volume 2 (Unclassified Version-Sealed Material Deleted) Corrected Version”).

Thus, during the time between October 2, 2003, when the designation occurred, and March 3, 2005, when the corrected version was filed, Kach, Kahane Chai and Kahane.org had no final record with which to come before

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<sup>5</sup> Petitioners’ motions were respectively titled: “Opposition of Petitioners Kahane Chai, Kach, and Kahane.org To Motion For Extension of Time To File Unclassified Administrative Records And Motion For Summary Review And To Set Aside Designations”; “Opposition of Petitioners Kahane Chai, Kach, and Kahane.org To September 24, 2004 Motion For Extension of Time To File Unclassified Administrative Records And Motion For Summary Review And To Set Aside Designations”; “Opposition of Petitioners Kahane Chai, Kach, and Kahane.org To October 25, 2004 Motion For Extension of Time To File Unclassified Administrative Records And Motion For Summary Review And To Set Aside Designations”.

this Court. For almost one and one half years, Petitioner were delayed their remedy in challenging their designations pursuant to 8 U.S.C. § 1189(a)(4)(B).

Kach, Kahane Chai, and Kahane.org members and supporters remain under governmental investigation. New investigations have begun against members. Assets were, and still are, frozen or confiscated (KAH03-08 at 419). People remain hesitant to associate with members of Kahane Chai, Kach or Kahane.org. United States citizens who associated with Kach, Kahane Chai, or Kahane.org fear traveling abroad lest they will not be able to return. Litigation costs for this case have risen due to the government's delays.

Indeed, petitioner's case was almost dismissed for "lack of prosecution" when their counsel had to withdraw. (Court Order, November 18, 2005). The time delay contributed to counsel having to withdraw, in turn further delaying justice for Kach, Kahane Chai, and Kahane.org. The Secretary's failure to comply with their constitutionally mandated requirement has injured Petitioners. Kach, Kahane Chai, and Kahane.org now seek to have their designations revoked pursuant to 8 U.S.C. § 1189(b)(3)(E),(B).

#### **IV. The State Department Discriminated By Only Designating Jewish Websites As Foreign Terrorist Organizations**

The State Department does not deny that only Jewish websites were designated as Foreign Terrorist Organizations, despite the fact that other designated entities also had websites at the time of the 2003 designations. The State Department seems to make the argument that its objective of stopping Kach, Kahane Chai, or Kahane.org's alleged terrorist activities justified "government enforcement decisions." (Response at 45-46.) The government cites United States v. Armstrong, 517 U.S. 456, 464 (1996) for the proposition that courts presume that prosecutors discharge their duties properly. (Id.; Response at 46).

Kach, Kahane Chai, and Kahane.org question the applicability of Armstrong, as it is a criminal case. Yet Armstrong does place a limit on prosecutorial discretion – the equal protection clause of the Fifth Amendment: "**...the decision whether to prosecute may not be based on 'an unjustifiable standard such as race, religion, or other arbitrary classification'**" United States v. Armstrong, 517 U.S. 456, 464 (1996) (quoting Oyler v. Boles, 368 U.S. 448, 456 (1962) (bolding added).

To prevail under Armstrong, the claimant must demonstrate a discriminatory effect by showing that "...similarly situated individuals of a

different race were not prosecuted.” (Id. at 465). In the case at bar, the State Department does not deny that various races are represented on the FTO list, and does not deny that only Jewish organizations had their websites designated. (Response at 45-46).

The government’s stated motive for only designating the alleged alias websites of Kach, Kahane Chai, and Kahane.org is that Petitioners have an abundant number of aliases. (Response at 46). Thus the only way to stop the terror of Kach, Kahane Chai, and Kahane.org is to list all their alleged aliases, including their alleged websites. (Id. at 46). This logic would lead to the outcome of not designating the website of Al Qa’ida, (KAH03-36 at 648), an exceptionally notorious organization, because Al Qa’ida “only” has fourteen aliases. (Response at 22-23). Kahane Chai, Kach and Kahane.org submit that they were discriminated against on the basis of religion.

Thus their designations should be revoked pursuant to 8 U.S.C. § 1189(b)(3)(B).

## **V. Designating A Website That Neither Advocates Nor Engages In Terror, Violates The First Amendment**

### **A. Kach, Kahane Chai, and Kahane.org Adopt And Incorporate Sections I and II**

**B. As With Any Organization In A Democracy, The Right To State Views Is Constitutionally Protected**

A website, as Kahane.org, is a newer form of communication, but remains a medium of free speech, nonetheless. As Kahane.org does not engage in, nor advocate terror, the State Department cannot justify muffling its voice or its message.

**C. Kahane.org's Principles Are Based On The Teachings Of Rabbi Meir Kahane**

Rabbi Kahane did not espouse terror, terrorist activity or terrorism against Arabs. However, the title of one of the books Rabbi Kahane wrote, "Never Again", and the political party he formed, Kach, came to represent the idea that Jews could no longer remain passive against virulent anti-semitism (Addendum at 1- 2). Violence against Jews required militant self-defense. With his growing influence, (KAH03-02 at 401, KAH03-26 at 484), and outspokenness (Addendum at 2), Rabbi Kahane's views towards Arabs were sometimes misunderstood. Petitioners' brief contributed to the confusion, as evident from the Response, page 12, footnote 4, and must be corrected.

Rabbi Kahane – lawyer, author, political party founder –believed no one owned the West Bank in modern times (Addendum at1, 3). Rabbi

Kahane felt that Israel acquired the West Bank after defending itself successfully in the 1967 war (Addendum at 2). Rabbi Kahane believed that the Arabs who lived on the land should be relocated to Jordan, their own state (Addendum at 3-4). But Rabbi Kahane did not advocate terror or violence to move the Arabs. Instead, Rabbi Kahane believed Israel should take over the land under eminent domain (Id). Rabbi Kahane believed the Arab residents should be paid the full value for their land (Id).

The points above are from a declaration by Samuel A. Abady, Esquire, and only a few pages were found in the Addendum of the Reply. Petitioners Kach, Kahane Chai, and Kahane.org only enclosed a few pages from the declaration to establish a point in their brief. The declaration pages enclosed in the Addendum were 1, 4, 5, and 7. The government inadvertently, most likely based on the alleged reputation of Rabbi Kahane, and the non-contiguous selection of pages from the declaration in the brief, made the following footnote:

<sup>4</sup> As an affidavit attached to petitioners' brief explains, Kahane advocated a "militant Jewish resistance" that included forcing "Arab residents" of Israel to be "relocated to their own state, Jordan." Pet. Br., Affidavit of Mr. Abady, at 1,4.

(Response at 12, footnote 4).

The first sentence actually reads: “The title became a catch phrase representing militant Jewish resistance [sic] to anti-Semitism which culminated in the Nazi Holocaust.” (Addendum at 1-2).

The second sentence actually reads: “(viii) the land should be taken over by Israel under eminent domain, the owners fully compensated for its monetary value, and the Arab residents then relocated to their own state, Jordan. [footnote deleted]” (Addendum at 3-4).

Thus Rabbi Kahane did not stand for terror. He stood for self-defense. He stood for fairness. That fairness extended to each and every person. Kahane.org, a website, is a medium of free speech, making the ideals of Rabbi Kahane known. This Court should revoke the designation of Kahane.org, and all its alleged alias, pursuant to 8 U.S.C. § 1189(b)(3)(B).

**CONCLUSION**

Based on the Brief and Reply for Petitioners Kach, Kahane Chai, and Kahane.org, this Court should hold unlawful and set aside the Secretary's designations for Petitioners Kach, Kahane Chai, and Kahane.org.

Respectfully submitted,

Kenneth Klein

Silver Spring, Maryland 20910  
(202) 628-4936  
Attorney for Petitioners

## CERTIFICATE OF SERVICE

I certify that I caused two copies of the Reply of Petitioners to be delivered by mail this 19<sup>th</sup> day of May, 2006, to the following counsel of record:

Douglas Letter, Esquire  
Terrorism Litigation Counsel

Mark S. Davies, Esquire  
U.S. Department of Justice  
Room 7513  
950 Pennsylvania Avenue NW  
Washington, D.C. 20530

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Kenneth Klein

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME  
LIMITATION

The undersigned counsel of record for Kahane Chai, Kach and Kahane.org hereby certifies, pursuant to F.R.A.P. 32(a)(7)(B)(ii) based upon the word count reported by the word-processing system used, Microsoft Office Word 2003, to prepare the reply, the Reply of Petitioners' Kahane Chai, Kach, and Kahane.org, contains 6,761 words and complies with said limitation.

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**ADDENDUM**

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ADDENDUM A - Declaration of Samuel A. Abady, Esq., Pages 1-8

**UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

-----X  
PEOPLE'S MOJAHEDIN ORGANIZATION OF IRAN,

Petitioner,

03-1387

- versus -

DEPARTMENT OF STATE, et al.,

Respondents.

-----X

- and -

CONSOLIDATED CASES NUMBERED 03-1388

and 03-1392

-----X

Samuel A. Abady, an attorney duly admitted to the bars of the State of New York, the United States District Courts for the Northern, Southern, Eastern and Western Districts of New York, the United States Court of Appeals for the Second and Fourth Circuits, and the United States Supreme Court, pursuant to 28 U.S.C. § 1746, hereby declares as follows:

1. I represent various Jewish activists who are American citizens and adherents to the political philosophy and religious teachings of the late Rabbi Meir David Kahane, founder of the Jewish Defense League ("JDL"), author of various books on politics and religion, and former member of the Knesset in Israel.
2. Rabbi Kahane was a graduate of New York University and New York Law School where he studied International Law. He founded the JDL in 1968. His first book was entitled *Never Again*. The title became a catch phrase representing militant Jewish resistance to

anti-Semitism which culminated in the Nazi Holocaust

3. In 1971, Rabbi Kahane emigrated to Israel where he founded the Kach political party. Kach means "thus" in Hebrew, short for a phrase made popular by Vladimir Jabotinsky, one of Israel's founding fathers, "raq kach,," in English, "only thus," meaning Jewish national liberation from the scourge of Jew-hatred in Christian and Islamic nations would come about only if the Jews abandoned their historically passive attitude towards physical self-defense and learned the military arts.
4. Rabbi Kahane was an implacable enemy of Arab and Islamic terrorism which he regarded as fundamentally evil. He believed fervently that Western nations such as the United States, the European states and Israel should be uncompromising in their opposition to such terrorism. He was scathing in his criticism of academics, commentators and political leaders who tacitly or openly clothed Arab and Islamic terrorists with political and moral legitimacy. He believed that, as Arab and Muslim terrorists became more sophisticated, they would develop techniques to engage in mega-terrorism resulting in mass murder. This was attempted in 1993 when the World Trade Center was bombed in hopes it would topple over and bring down many tower block office buildings in lower Manhattan, and achieved on September 11, 2001, when the World Trade Center complex was destroyed, killing nearly 2,300 innocent men, women and children.
5. Rabbi Kahane's perhaps most controversial views were expressed in his book entitled *They Must Go*. In sum and substance, his thesis was that: (i) Palestinian Arab nationalism

was derived from Nazism,<sup>1</sup> (ii) Palestinian culture was too thoroughly suffused with the values of terror and racist hatred of Jews to realistically expect a political solution in their war against Israel;<sup>2</sup> (in) the population of Jordan is 75% Palestinian, albeit ruled by a Hashemite (*i.e.*, Beduin) autocratic monarch, and therefore, a *de facto* Palestinian state, (iv) the disputed territories of Judea, Samaria and Gaza (the so-called "West Bank," *i.e.*, territory west of the Jordan river), never belonged to any nation state in modern history, and was last legally ruled by the British under the 1916 Sykes-Picot Agreement which created the British Mandate in Transjordan and Palestine (*i.e.*, pre-state Israel); (v) Jordanian hegemony over Judea and Samaria and Egyptian hegemony over Gaza after the British evacuated from Palestine in 1947 were never recognized either by the other Arab states or the international community; (vi) Israel acquired these territories in 1967 defending against an Arab war of aggression; (vii) under well established principles of international law, Israelis had every right to reside in these territories, and the Arab insistence that this area be Judenrein was simply an expression of traditional Arab racism towards Jews; and (viii) the land should be taken over by Israel under eminent domain,

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<sup>1</sup> Rabbi Kahane was not alone. Prof. Francisco Gil-White of the University of Pennsylvania, among others, has concluded that the ideological basis of the Palestinian national movement was Nazism. *See*, Gil-White "Palestine is Our Land and the Jews Are Our Dogs," <http://emperors-clothes.coni/gilwhite/Israel.htm>.

<sup>2</sup> In June of 2002, a poll conducted by the Jerusalem Media & Communication Center, a Palestinian think tank headed by Dr. Ghassan Khatib, the Minister of Labor in the Palestinian cabinet, surveyed 1,179 Palestinians in the West Bank and Gaza Strip between May 29 and June 2. The poll found that 78.9% of those surveyed favored the continuation of the Intifada, and 68.1% said that they supported continued suicide bombing operations against Israeli civilians. *Israel Insider Magazine*, June 13, 2002, published at <http://web.israelinsider.com/bin/en.jsp?enPage=ArticlePage&enDisplay=view&enDispWhat=object&enDispWho=Article5%Ell127&enZone=Diplomacy&enVersion=0&>

- the owners fully compensated for its monetary value, and the Arab residents then relocated to their own state. Jordan.<sup>3</sup>
6. Due to his hard line views against Arab terrorism, not surprisingly. Rabbi Kahane was in the cross-hairs of Arab terrorists for many years. In 1990, while giving a speech in New York City, he was murdered by El-Said el-Nossair, a member of the Al-Queda Islamic international terrorist organization. Reflecting the traditional Arab embrace of the "blood feud," *i.e.*, that honor demands revenge be taken not only against one's enemy, but also, his entire family,<sup>4</sup> in December of 2000, Palestinian terrorists murdered Rabbi Kahane's only son, Benjamin Ze'ev Kahane, along with his wife, Talia.<sup>5</sup>
  7. Among my clients is Fern Sidman, a single mother in New York and former member of the Jewish Defense League. Ms. Sidman received a letter dated September 3, 2003, from William Pope, Acting Director of Counter-terrorism at the United States Department of State, providing the notice mandated by this Court's decision in *National Council of*

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<sup>3</sup> This policy, also embraced by Israel's Moledet Party, is often grounded in the "exchange of populations," argument, *i.e.*, that relocation of the Arab population of the disputed territories is justified by the ethnic cleansing of the 960,000 Jewish refugees from the Arab countries in the period 1948-50. Whereas Israel absorbed all these refugees, whose descendents make up half its population today, the Arab states refused to absorb the Palestinian refugees and grant them citizenship, in order to use them as a sword in the Arab war against Israel. See, David G. Littman, "The Forgotten Refugees - An Exchange of Populations," *National Review*, Dec 3, 2002, published at <http://www.nationalreview.com/i/script/printpage.asp?ref=/comment/comment-littman120302.asp>.

<sup>4</sup> See, Uri Avinery, "The Ongoing Blood Feud," *Palestine Chronicle*, Jan. 20. 2002. <http://www.palestinechronicle.com/article.php?story=20020120193255152>. Avinery is a well-known Israeli gadfly sympathetic to the Palestinian nationalist cause, and has called for creation of a bi-national Jewish-Arab state in all of Israel and the disputed territories..

<sup>5</sup> See, Fern Sidman, "Who Really Murdered Binyamin Kahane," Jan. 2, 2001, [http://www.jdl.org/israel/b\\_kahanemurder\\_shtnil](http://www.jdl.org/israel/b_kahanemurder_shtnil).

Resistance of Iran v. Department of State, 251 F.3d 192 (D.C. Cir. 2001) that the Secretary of State intended to designate certain Jewish organizations named after or inspired by Rabbi Kahane as Foreign Terrorist Organizations ("FTO") under 8 U.S.C. § 1189. A copy of that letter is annexed hereto as Exhibit "A."

8. Mr. Pope's letter to Ms. Sidman further advised that she was entitled to disclosure of all non-secret information on which the Secretary of State supposedly justified designating these Jewish organizations as FTO's.
9. The law requires the Secretary of State to designate FTO's every two years. Annexed at Exhibit "B" is a copy of 66 FR 51088-01 dated October 5, 2001. As the Court can see, at that time, the Secretary of State designated Kahane Chai ("chai" is Hebrew for lives, hence, "Kahane Lives") as an FTO, and listed seventeen Jewish activist political groups or Jewish educational institutions as alter egos of Kahane Chai.
10. Annexed at Exhibit "C" is a copy of 68 FR 56860-03 dated October 2, 2003. As the Court can see, this time, the Secretary of State designated Kahane Chai as an FTO, and listed thirty-seven other Jewish activist groups and Jewish educational organizations as alter egos, including the original list of seventeen from 2001,
11. These organizations are listed side-by-side with traditional, international Arab terrorist organizations like Hamas, Islamic Jihad and Al-Queda, but the list conspicuously excludes the Palestine Liberation Organization, historically, the world's leading force of Arab terrorism which was founded in 1964 by Egyptian national and current President, Yasser Arafat.
12. The irony of the Secretary of State's action is that many of the Jewish organizations

- named in 68 FR 56860-03 are domestic, not foreign, and as anyone familiar with Rabbi Kahane's writings would know, none of the Jewish organizations on the Secretary of State's list are terrorist organizations, but to the contrary, represent a political philosophy bitterly opposed to terrorism.
13. In compliance with his letter, I wrote to Mr. Pope on September 16, 2003, and demanded he disclose the information mandated by this Court in *National Council of Resistance of Iran* as it pertained to the organizations listed in his letter, some of which were designated in 66 FR 51088-01 . A copy of that letter is annexed hereto as Exhibit "D " Neither he nor anyone else ever acknowledged receipt of my letter, much less responded to it.
  14. Upon learning of the expanded list of thirty-seven alter egos for Kahane Chai published in 68 FR 56860-03 on October 2, 2003. I again wrote Mr. Pope on October 22, 2003, and demanded that he disclose the information mandated by this Court in *National Council of Resistance of Iran* regarding all the organizations on the list. A copy of that letter is annexed hereto as Exhibit "E." Yet again, neither he nor anyone else at the Department of State responded to my letter.
  15. Accordingly, to date, despite having timely complied with the deadline unilaterally declared by Mr. Pope, and despite this Court's directive to the Secretary of State in mandated by this Court in *National Council of Resistance of Iran*, no disclosure of any kind has been provided to Ms. Sidman.
  16. The Secretary of State's refusal to comply with this Court's directive in in *National Council of Resistance of Iran* has direct and serious consequences to Ms. Sidman, as she faces prosecution for her political beliefs and association with Rabbi Kahane.

17. Specifically, a grand jury has been convened in the Eastern District of New York to initiate prosecution of Ms. Sidman and others under 18 U.S.C. § 2339B which prohibits giving "material support" to an FTO. One of the FTO's listed in 68 FR 56860-03 is the Judean Voice, a magazine of political commentary published in print and on the Internet. It is apparently the Government's contention that, by purchasing a copy of this magazine, the purchaser has violated 18 U.S.C. § 2339B, an offense which carries up to fifteen years in prison.
- 18.. A. U.S. A. Ruth Nordenbrook, a career prosecutor in the Eastern District of New York whom I have known for many years, is presenting the evidence to this grand jury. Ms. Sidman was subpoenaed to testify before the grand jury on October 23, 2003. A copy of that subpoena is annexed hereto as Exhibit "F." A.U.S.A. Nordenbrook advised me that Ms. Sidman was a target of the grand jury.<sup>6</sup> Accordingly, I advised A.U.S.A. Nordenbrook that, because the Secretary of State in effect has perverted the expression of Jewish activist political beliefs into a predicate for terrorism prosecutions, and constitutionally protected acts such as paying dues to the organizations listed in 68 FR 56860-03, or purchasing literature distributed by such organizations such as the Judean Voice or Rabbi Kahane's books, constitutes providing "material support" for an FTO, I advised Ms. Sidman to invoke her Fifth Amendment rights. In response, A.U.S.A. Nordenbrook withdrew the subpoena.

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<sup>6</sup> In the Second Circuit, persons subpoenaed to testify before a grand jury are entitled to advance notice that they are targets of prosecution. *United States v. Jacobs*, 547 F.2d 772 (2d Cir. 1976), *cert granted*, 431 U.S. 937, 97 S.Ct. 2647, 53 L.Ed.2d 254 (1977), and *cert. dismissed*, 436 U.S. 31, 98 S.Ct. 1873, 56 L.Ed.2d 53 (1978).

19 I swear under the penalties of perjury of the laws of the United States that the foregoing is true and correct.

Dated: New York, New York  
December 18, 2003

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Samuel A. Abady