UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PALESTINE INFORMATION OFFICE, et al.,

Plaintiffs,

v.

GEORGE P. SHULTZ, et al.,

Defendants.

C.A. No. 87-3085

OPINION OF CHARLES R. RICHEY
UNITED STATES DISTRICT JUDGE

I. INTRODUCTION

This matter comes before the Court as a result of a decision by the Secretary of State to order the closing of the Palestine Information Office ("PIO") in Washington, D.C., pursuant to the Foreign Missions Act ("FMA"), 22 U.S.C. §§ 4301, et seq., because it is a "foreign mission" of the Palestine Liberation Organization ("PLO"). For foreign policy reasons, the Secretary of State has determined that the PLO is not welcome in the United States, ~~At the outset, this Court makes clear that it is~~ not passing on the wisdom of such a foreign policy decision because "matters relating 'to the conduct of foreign relations...are so exclusively entrusted to the political branches of government as to be largely immune from judicial inquiry or interference.'" Regan v. Wald, 468 U.S. 222, 242 (1984), quoting Harisiades v. Shaughnessy, 342 U.S. 580, 589 (1952); see also Hotel & Restaurant Employees Union, Local 25 v. Smith, 594 F.Supp. 502, 507 (D.D.C. 1984), aff'd in part and rev'd in part on other grounds sub nom., Hotel & Restaurant Employees Union, Local 25 v. Attorney General of the United States, 804 F.2d 1256 (1986), vacated, en banc, 808 F.2d 847 (1987).

The question for the Court to decide is whether the Secretary of State acted lawfully in determining, pursuant to the Foreign Missions Act, that the PIO is a foreign mission of the PLO. If the Secretary of State did act lawfully, any alleged burden on plaintiffs' first amendment rights is incidental ~~and is no greater than is essential to~~ the furtherance of a legitimate governmental interest, ~~i.e.,~~ namely the conduct of foreign policy. See United States v. O'Brien, 391 U.S. 367, 377 (1968).

II. FACTUAL BACKGROUND OF THE CASE

The PIO is a registered agent of the PLO under the Foreign Agents Registration Act ("FARA"), 22 U.S.C. §§ 611-621, as is the PIO's director, a naturalized U.S. citizen, Hasan Abdel Rahman. Complaint ¶ 12; Rahman Declaration ¶ 6. The PIO has been operating since 1978. Rahman Declaration ¶ 2. The annual budget of the PIO is approximately $350,000. Rahman Declaration ¶ 8. This budget is paid for by the Palestine National Fund, the finance department of the PLO. Rahman Declaration ¶ 8 ~~& Figure 1 attached to Exhibit 4 of Brief of Amici Curiae~~. The PIO operates exclusively on behalf of the PLO. See Exhibit 1 to Rahman Declaration.

As late as May 13, 1987, the State Department was of the view that the PIO, "neither reflects nor requires the approval of the United States Government." Letter from James A. McVerry, Political Officer in the Office of Jordan, Lebanon and Syrian Affairs, Department of State, to Robert Clarke, Director of Government Affairs, National Association of Arab-Americans; Exhibit 2 to ~~Memorandum in Support of Plaintiffs' Motion for a Preliminary Injunction~~. This letter went on to say that "so long as that office regularly files reports with the Department

of Justice on its activities as an agent of a foreign organization, complies with all other relevant U.S. laws, and is staffed by Americans or legal resident aliens, it is entitled to operate under the protection provided by the First Amendment of the Constitution." Id. (emphasis added). However, approximtely, four months later, the PIO received a letter from Ambassador James E. Nolan, Jr., Director of the Office of Foreign Missions at the Department of State, informing that Deputy Secretary of State John C. Whitehead had determined that the PIO had been designated a "foreign mission" of the PLO pursuant to 22 U.S.C. § 4302(a)(4)(B).[1] The Deputy Secretary determined that the PIO met the criteria of a "foreign mission" as defined in the Foreign Missions Act. Acting pursuant to a delegation of authority from the President under Article II of the Constitution to conduct this country's foreign affairs to the Secretary of State, the PIO was ordered to cease operating as a foreign mission of the PLO. See Letter from Ambassador James E. Nolan, Jr. to the PIO dated September 15, 1987; Exhibit A to Plaintiffs' Complaint. The Department of State further determined that the PIO "(1) must divest itself of all real property under 22 U.S.C. § 4305(b); (2) must acquire and

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[1] 22 U.S.C. § 4302(a)(4)(B) provides:

> (4)"foreign mission" means any mission to or agency or entity in the United States which is involved in the diplomatic, consular, or other activities of, or which is substantially owned or effectively controlled by--
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> * * *
>
> (B)an organization...representing a territory or political entity which has been granted diplomatic or other privileges and immunities under the laws of the United States or which engages in some aspect of the conduct of the international affairs of such territory or political entity.... (emphasis added).

dispose of all benefits as defined by 22 U.S.C. § 4302(a) and as designated by the Department, through the Office of Foreign Missions; and (3) must discontinue use and dispose of all such benefits." Id. The designation of the PIO as a "foreign mission" of the PLO was published in the Federal Register. 52 Fed. Reg. 37035 (October 2, 1987). See Exhibit B to Plaintiffs' Complaint. The PIO was at first given 30 days to cease operating as a foreign mission to the PLO, but was subsequently given until December 1, 1987 to comply with the State Department's order. Pursuant to this Court's request during a status conference held November 25, 1987, the Department of State agreed to extend the order until 11:59 p.m., December 3, 1987 in light of the fact that this matter had to be reassigned to this Court at the last minute.

III. POSTURE OF THE CASE

On November 13, 1987, plaintiffs filed a complaint seeking declaratory and injunctive relief and at the same time filed a motion for preliminary injunction. Plaintiffs' allege a whole host of infirmities regarding the Secretary of State's ~~finding~~ designation that the PIO is a "foreign mission" of the PLO and decision to order the PIO to cease operating as a "foreign mission" of the PLO. Specifically, the PIO contends that the defendants have exceeded their statutory authority or acted contrary thereto under the Foreign Missions Act, ~~that~~ that the order violates plaintiffs' rights to freedom of speech and association, that the Foreign Missions Act, as applied, is unconstitutionally vague, and that the ~~lack of~~ failure to provide adequate procedures whereby plaintiffs can challenge the ~~factual~~ underpinnings of the decision violates their due process rights under the Constitution. Defendants disagree with these allegations and view

the case not as an attack on anyone's constitutional rights, but rather as a legitimate exercise of the Executive's constitutional responsibility to conduct foreign affairs. Defendants have repeated that the basis for the order was not to stifle speech or associational rights, but to close down a foreign mission representing an organization that is said to advocate terrorism both here and abroad.

At the status conference held November 25, 1987, the parties tentatively agreed to the Court's suggestion that plaintiffs' motion for a preliminary injunction be consolidated with a trial on the merits pursuant to Fed. R. Civ. P. 65(a)(2). Thus, this matter is before the Court on cross-motions for summary judgment and represent a decision on the merits. This Opinion shall constitute the Court's findings of fact and conclusions of law as required by Fed. R. Civ. P. 52(a). After a thorough and considered view of all the papers submitted by the parties in support of and in opposition to their respective positions, the Court concludes that in light of the undisputed facts set forth in P's Pleadings, defendants are entitled to a judgment as a matter of law.

IV. ISSUES PRESENTED

A. The Secretary of State's Determination that the PIO Constituted a "Foreign Mission" of the PLO Was Proper Under the Foreign Missions Act

1. The Secretary of State Is Afforded Wide Latitude in the Conduct of Foreign Affairs

The Court notes Congress specifically committed to the Secretary's discretion determinations with respect to the meaning and applicability of the terms used in the definitions section of the Foreign Missions Act. See 22 U.S.C. § 4302(b). Thus, the fact that plaintiffs disagree with how the Secretary

has decided to determine the meaning and applicability of the term "foreign mission" as applied to the PIO is ~~essentially~~ of no merit. The reason for such discretion is obvious: Congress recognizes that legislation cannot foresee the myriad contingencies that arise in the context of foreign affairs. In fact, any attempt to do so may well harm this country's interests in the foreign arena. If Congress, one of the political branches to which the conduct of foreign relations is ~~exclusively~~ entrusted, (see Regan v. Wald, 468 U.S. at 242) decides in no uncertain terms to defer to the expertise of the Secretary of State, it is not for this Court to step in and second guess the Executive. "Courts cannot replicate the expertise of the Department of State and proceed to take over the Department's functions." Abourezk v. Reagan, 785 F.2d 1043, 1070 n.4 (D.C. Cir. 1986)(Bork, J., dissenting). ~~Thus,~~ ~~plaintiffs face a heavy burden in their attempts~~ to persuade the Court that the Foreign Missions Act, as applied by the Secretary, does not authorize the designation of the PIO as a "foreign mission."

2. The PLO Is an Organization within the Meaning of 22 U.S.C. § 4302(a)(4)(B)

Plaintiffs contend that the failure within the official designation of the PIO as a "foreign mission" of the PLO to characterize the PLO as an organization "representing a territory or political entity" "highlights the inappropriateness of using this statute to designate the PIO as a foreign mission." Plaintiffs' Memorandum at 11. This argument is attenuated at best for not only does it overlook the Secretary's authority to exercise discretion as to the

meaning and applicability of the terms used to define a "foreign mission," but it would require the Secretary to afford official recognition, at least for purposes of applying the Foreign Missions Act, to the PLO. It is precisely because the United States does not recognize the PLO, and because it is concerned with PLO-sponsored terrorism, that the Secretary is ordering the PIO to cease operating as a "foreign mission" of the PLO. See "Determination and Designation of Benefits," Exhibit A to Complaint. Plaintiffs' argument, if accepted, puts this Government's foreign policy on trial by requiring it to admit whether we will recognize the PLO or not. To insist that the Court force the State Department to make this type of Hobson's choice is a matter this Court should not decide which as it implicates foreign affairs, one of the most explosive if not sensitive areas of the world, namely the Mid-East. Rejected. The PLO is an organization for purposes of defining the PIO as a "foreign mission" pursuant to 22 U.S.C. § 4302(a)(4)(B).

3. The PIO Is an "Entity" within the Meaning of 22 U.S.C. § 4302(a)(4) in Light of the Ordinary Meaning of the Word

Plaintiffs next argue that the PIO is not an "entity" within the meaning of the subsection defining a "foreign mission." Plaintiffs' Memorandum at 11-14. Because the term "entity" is not defined within the statute, so plaintiffs aver, the Court must look to the legislative history of the Foreign Missions Act. Specifically, plaintiffs contend that the PIO is not an "entity" within the meaning of the statute because § 701 of the House Conference Report, H. Conf. Rep. 99-952 (October 2, 1986), to the Intelligence Authorization Act for Fiscal Year 1987 amended the definition of "foreign mission" to make clear that the Secretary of State may only subject corporations or other commercial entities to the controls of the Foreign Missions Act. This hypertechnical reading of the statute is rejected because (1) it ignores the plain meaning of the statute that

speaks only of an "entity" and not a "commercial entity" and (2) it overlooks the fact that the PIO more than adequately meets the definition of "agency." With respect to plainitffs' argument that "entity" means "commercial entity" and, that, therefore, the PIO cannot be defined as a "foreign mission" of the PLO, this Court is in total agreement with Justice Scalia's admonition to adhere to the "venerable principle that if the language of a statute is clear, that language must be given effect -- at least in the absence of a patent absurdity." I.N.S. v. Cardoza Fonseca, 107 S.Ct. 1207, 1224 (1987)(Scalia, J., concurring). There is no patent absurdity in this case. The word "entity" is clear. The PIO is an entity. Therefore, the PIO is an "entity" for purposes of the definition of a "foreign mission."

4. The PIO Is Engaged in "Other Activities" on Behalf of the PLO

The PIO is clearly engaged in "other activities" on behalf of the PLO that support the determination made by the Secretary that the PIO is a "foreign mission" of the PLO. In its most recent filing with the Registration Unit of the Internal Security Section of the Criminal Division at the Department of Justice pursuant to § 2 of FARA, the PIO candidly listed political activities and political propaganda that it undertakes for the exclusive benefit of the PLO. See Exhibit 1 to Rahman Declaration. Assuming that all other statutory prerequisites are established, a finding that the PIO is "substantially owned or effectively controlled by" the PLO is unnecessary to determine that the PIO is a "foreign mission" of the PLO. This is because the language "substantially owned or

effectively controlled by" is written in the disjunctive; it is not a condition precedent to the determination of "foreign mission" status. Nevertheless, the Court finds that the PIO is "substantially owned or effectively controlled by" the PLO so as to warrant "foreign mission" status.

5. The PIO Is "Substantially Owned or Effectively Controlled By" the PLO, and, thus, Executive Regulation Is Permissible

As noted earlier, Congress provided that "determinations with respect to the meaning and applicability of the terms used in subsection (a) shall be committed to the discretion of the Secretary." 22 U.S.C. § 4302(b). In a case involving a determination of "control" strikingly similar to the instant case, the Supreme Court considered a determination by the Subversive Activities Control Board that the Communist Party of the United States was "substantially directed, dominated, or controlled by the foreign government or foreign organization controlling the world Communist movement." Communist Party of the United States v. Subversive Activities Control Board, 367 U.S. 1, 36 (1961). The determination of "control," accoridng to the Supreme Court, by the administrative agency charged with its enforcement, is to be given great weight by a reviewing court. Id. at 40-41. "So long as there is warrant in the record for the judgment of the expert body it must stand." Id. at 41. In this case, the Court finds that there is more than enough evidence to warrant the Secretary's determination that the PIO is a "foreign mission" of the PLO.

The PIO operates exclusively as the agent for the PLO. See Exhibit 1 to Rahman Declaration. The PIO undertakes informnational, political advocacy and political propaganda

activities on behalf of the PLO. Complaint ¶ 11. Except for Rahman's salary which is funded by the League of Arab States, the entire operating budget of the PIO is supplied by the PLO. Plaintiffs' Memorandum at 4-5. These facts, admitted by plaintiffs, combined with the Secretary's discretions under the Foreign Missions Act to determine the meaning and applicability of the terms that define a "foreign mission" and the traditional deference paid by the Courts to the actions taken by the Executive in the conduct of foreign affairs establish a compelling case that the Secretary's determination that the PIO is "substantially owned or effectively controlled by" the PLO is well within the statutory confines of the Foreign Missions Act and ~~will not~~ be disturbed by this Court.

B. Having Found that the Secretary's Determination that the PIO Is a "Foreign Mission" of the PLO Was Proper, the Court Concludes that to the Extent that Plaintiffs' First Amendment Rights Are Affected at All, the Impact Is Incidental to the Furtherance of a Substantial Governmental Interest

~~In spite of~~ plaintiffs attempt to characterize the action by the Secretary of State ~~in terms of an effort to~~ regulate political advocacy ~~or speech~~ within the United States, ~~thereby implicating plaintiffs' First Amendment rights of speech and association,~~ the Court believes that at the core of this action ~~lies a legitimate goal on the part of the Secretary of State to conduct foreign policy, at the direction of the President and pursuant to Article II of the Constitution, by closing a foreign mission of an organization that the government of the United States neither condones nor recognizes.~~ The State Department's order directing the PIO to cease operating does not prohibit plaintiffs from advocating a pro-PLO position or from associating with others of like mind. Indeed, such an

order would likely be constitutionally invalid. Plaintiffs' long-winded recitation of the dire consequences, in terms of abridged First Amendment rights, that will result from the Secretary's determination that the PIO is a "foreign mission" of the PLO and thus must cease operating as a "foreign mission" overestates the impact of the Secretary's decision.

Plaintiffs' constitutional case fails to put this matter in the proper perspective. The Court must balance an asserted governmental interest against any alleged infringement of First Amendment rights. The Supreme Court has established the test for these situations in United States v. O'Brien, 391 U.S. 367, 377 (1968):

> (A) government regulation is sufficiently justified if it is within the constitutional power of the Government; if it furthers an important or substantial governmental interest; if the governmental interest is unrelated to the suppression of free expression; and if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest.

When this test is applied to the facts of this case, it becomes clear that the Secretary's order that the PIO cease operating as a "foreign mission" of the PLO must be upheld. The Secretary determined that the order was in the interests of United States foreign policy; the foreign policy of the United States is conducted by the Executive under Article II of the Constitution; the order was crafted carefully to ensure that it was content neutral and unrelated to the suppression of free expression; and to the extent that the order restricts plaintiffs' First Amendment freedoms, such restriction is

incidental.

The Secretary's order in no way prevents plaintiffs from debating political issues with respect to the PLO. See Mills v. Alabama, 384 U.S. 214, 218-19 (1966). The PIO, to the extent that it is no longer controlled by the PLO, may continue to advance the Palestinian cause as articulated by the PLO. See ~~In re Primus, 436 U.S. 412 (1978);~~ NAACP v. Button, 371 U.S. 415, 430 (1963). ~~The~~ Secretary's order was not leveled at the PIO because it disagreed with the message ~~a~~ but rather ~~to show its displeasure with the PLO.~~ The order does not sever the plaintiffs' connection with the PLO, but rather prohibits the PLO from "controlling" the plaintiffs in ways that the State Department determines are inimical to the foreign policy interests of this country. ~~Thus~~, the Court ~~finds~~ that in applying the O'Brien balancing test, the substantial governmental interest in conducting foreign policy ~~only incidentally~~ affects the First Amendment rights of the plaintiffs.

CHARLES R. RICHEY
UNITED STATES DISTRICT JUDGE

Dated: ~~November 30~~ December 1, 1987

as an expression of U.S. concern over terrorism committed and supported by individuals and organizations associated with the PLO, and as an expression of our overall policy condemning terrorism." See "Determination and Designation of Benefits" as applicable to the PIO made by Deputy Secretary Whitehead, September 15, 1987, Exhibit A to Complaint.