

**INTERRELIGIOUS FOUNDATION FOR COMMUNITY ORGANIZATION, INC.**  
**Taxpayer ID No. 13-2590548**

**PROTEST AND APPEAL**

**Interreligious Foundation for Community Organization, Inc. (IFCO)** hereby protests and appeals to the Office of Appeals the Internal Revenue Service's proposed revocation of its exemption from taxation pursuant to Internal Revenue Code §501(c)(3) which is set forth in the Report of Examination dated October 22, 2013, a copy of which is annexed , for the tax periods ending 12/31/09 and 12/31/10. The report is referred to below as "Explanation" .

This protest/appeal is submitted by undersigned counsel to IFCO whose Power of Attorney for the tax periods in question is on file with the IRS.

The matters of disagreement with the proposed action and the facts and reasons in support are as set forth below:

1. The audit conducted by IRS was based on the faulty premise that IFCO's fiscal sponsorship of a project known as "Viva Palestina" was providing support to a terrorist organization in Gaza, Palestine known as Hamas, a group listed by the United States government as a terrorist organization. In fact, the project was not designed to nor did it in fact support any terrorist group but was designed to provide ambulances and medical supplies to the people living in Gaza who had been suffering from the lack of such humanitarian supplies and equipment. (Explanation, p.4)

2. The audit found fault with a project of IFCO which has for more than 20 years consisted of a Caravan across the United States seeking humanitarian aid for the people of Cuba and then the delivery of such aid to Cuba. The audit suggests that the Treasury Department's Office of Foreign Assets Control has established regulations which prohibit IFCO's Cuba caravans and the transfer of

goods to Cuba. In fact, this project sometimes gains the attention of OFAC. but the project has never been declared to be illegal and enforcement of any sanctions against Cuba lies with OFAC., not with the Internal Revenue Service. (Explanation p. 5)

3. The audit found fault with one aspect of a program of scholarships for medical school education in Cuba which is administered by IFCO. The audit suggested that IFCO, in having it's employees transport small amounts of money to the scholarship students in Cuba which is provided by their parents is an illegal "money remitting" program, in violation of regulations established by OFAC. In fact, the provision of these small amounts of parental support for the medical students does not violate any regulations as the students are licensed by OFAC to spend money in Cuba and the recipients of the small funds provided are US citizens, not Cuban citizens. Any legal problems with IFCO transmitting these small gifts is a matter within the jurisdiction of OFAC., not the IRS. In addition, travel to Cuba by IFCO's officers and employees is not an illegal act, as the audit seems to state. (Explanation p. 6)

4. The audit (Explanation p. 7) discusses various projects for which IFCO is the fiscal sponsor and suggests that such projects did not further IFCO's exempt purposes. In fact, each and every fiscally sponsored program is accepted on the basis of a written proposal submitted by the proposed sponsoree. The proposal is reviewed by IFCO and only if it meets IFCO's exempt purposes and is consistent with its vision, is it accepted. A letter is then provided to the sponsored group advising them that funds may only be used for the purposes stated in the accepted proposal and that all funds must be used for 501(c)(3) purposes. Despite the audit's statement that "very little documentation" was available for review, in fact every current and most historical programs had substantial documentation. The files and records of IFCO for the years in question are herewith

submitted as part of this appeal record and will be made available at any conference or hearing on this question, as well, as several others, including whether IFCO maintains “control and discretion” over such funds.

5. The audit suggests that certain fiscally sponsored programs or projects were designed to benefit specific individuals (Explanation p. 9). IFCO submits that the programs were to benefit a larger community, notwithstanding that specific individual’s situations were the focus.

A. Friends and Family of Mutulu Shakur is a program designed to raise community awareness of the plight of “political prisoners” who remain incarcerated as a result of their political activities and to focus awareness on improper governmental prosecutions of similarly situated individuals. Mutulu Shakur’s case is representative of these cases and activity on his behalf is seen as educational and organizational for a broad range of communities concerned with the plight of incarcerated political prisoners.

B. Free Mumia Coalition is a program designed to raise community awareness of issues involving racism, the death penalty and fair trial issues involving this outspoken journalist. The case of Mr. Jamal has garnered world-wide attention on his case as representative of racism in the criminal justice system and the uneven application of the death penalty. Journalists around the world have supported this cause and use this case to educate the public on issues of journalistic freedom and freedom of the press. IFCO’s support is part of this educational activity.

C. Luis Miranda Memorial was a project to honor the activity of Luis Miranda and bring awareness of his life of service to the Hispanic community and to the public at large as well as the community he served. Mr. Miranda was the founder of Casa De Las Americas, an educational organization based in New York City which has worked with IFCO’s Cuba Caravan program,



supported the medical student scholarship program, and constitutes a progressive voice in the Hispanic community. Support for the event memorializing his death was support for an educational program on his life of activity and achievement, role models for those who hear the message.

D. Pro Libertad Freedom Campaign was a project designed to focus attention on the plight of political prisoners incarcerated for their support of the Independence of Puerto Rico. The US government's repressive responses to those seeking independence raises broader issues for the community of support for these political prisoners and for the idea of free speech in support of what the government has tried to make an unpopular program within the Hispanic and Puerto Rican communities.

D. Safiya-Nuh Foundation was a program supported by IFCO to bring community awareness to the plight of political prisoners incarcerated as the result of the US government's "COINTEL Program", a campaign led by the FBI to limit the effectiveness of individuals and organizations seeking to eliminate racism in American life through civil rights activities and protests. It reaches the broader issues of racism and repression which serve to educate the community at large on these issues.<sup>1</sup>

E. Health-Care Now was a program designed to support the educational programs of the Health-Care Now organization and was limited to such programs around universal health care as such issues were being publicly debated in connection with the consideration of broad health care reform discussions, part of which became the Affordable Care Act passed by Congress. Contributions to IFCO were designed only to support the educational programs of the sponsored

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<sup>1</sup> The same issues and some of the same prisoners are involved in connection with the Jericho Project, another project fiscally sponsored by IFCO but conducted by another community group.

entity and to give IFCO's donor's the opportunity to support such programs.

F. Viva Palestina was, as noted above, a program designed to bring humanitarian aid to the population of Gaza in the form of ambulances and medical supplies. The Explanation, at p. 10, indicates that these funds were "used to support HAMAS, a designated terrorist group". This is disputed and simply wrong. No funds were supplied to HAMAS or to any entity controlled or operated by HAMAS. The IRS provides no support for such a conclusion except an internet report from an entity called the "Investigative Project on Terrorism". This group is believed to be a propaganda arm of the Israeli government and cannot be relied on for the purpose for which the IRS uses it, i.e. that there was a connection between the Viva Palestina program and HAMAS. Simple internet research shows that the Viva Palestina convoys were solely designed to provide medical aid to a long-suffering population which had been subjected to a blockade preventing the delivery of such supplies. IRS was provided documentation concerning the charitable purposes of this project as well as the documentation supporting the use of the funds for these purposes. IRS concludes that the documentation "could not be verified", a conclusion not supported by the vast numbers of e-mails, receipts and correspondence in the files submitted to IRS and made available for this appeals review.

IRS concludes that "funding of HAMAS, a designated terrorist organization, is an illegal activity". This is true, as far as it goes but has no relevance to IFCO whose program did not fund HAMAS but provided much needed medical aid. Before agreeing to participate as a sponsor of the Viva Palestina convoys, IFCO took steps to seek assurance from its legal counsel that the contemplated program of providing medical aid did not run afoul of any restrictions on imports to the Gaza region established by the United States government. IFCO's efforts in this connection

were documented in a written request from IFCO to its counsel, a copy of which was provided to the IRS auditor and which is ignored in the Explanation of Items document. The activities of IFCO (and the Viva Palestina convoy) were neither illegal nor a violation of public policy but supported a public policy of providing charitable aid to those in need, in this case the population of Gaza.

Efforts to provide charitable aid to deserving populations has been an integral part of IFCO's programs and projects for quite some time. The Cuba Friendshipment caravans, the assistance to the victims in New Orleans of Hurricane Katrina and aid to the people of Haiti after similar natural disasters are examples of IFCO activity completely consistent with the Viva Palestina project. IFCO has historically provided help and support in this vein, notably in connection with a hurricane disaster in Nicaragua and the Liberty Lake Band in Canada.

6. The audit suggests (Explanation p. 9) that the above programs (and several others) did not further IFCO's exempt purpose. IFCO disagrees with this conclusion and asserts that this is simply not true. All of IFCO's programs and projects, including those for which IFCO acts as a fiscal sponsor, are subject to review by the organization's Board of Directors or its designated subcommittee and are not approved unless they are within IFCO's educational and charitable purposes. Any conclusion to the contrary, based on an examination of the underlying documentation which is part of this appeal, is wrong.

7. The suggestion that IFCO did not retain "control and discretion" (Explanation p. 9) is similarly misplaced. A review of the files shows that each sponsored program or project was limited in its use of any funds which came through IFCO to the scope of the original proposal and to only those activities allowed under IRC §501(c)(3). In most cases, a review of the files submitted shows that receipts and other documentation for the funds was required by IFCO and kept as a records of



expenditures. In several cases, the documentation for the expenses paid through IFCO was documented by an oral conversation between the then Executive Director, Reverend Lucius Walker and the representative(s) of the sponsored project. As related to the IRS examiner (but ignored in the Explanation), personal relations of trust and confidence between these persons served as the basis for several reimbursements or disbursements of funds. The inability to provide written documentation for certain of these payments as revealed during the audit process caused the current IFCO Board of Directors to investigate the reasons for the lack of written documentation and to adopt a resolution assuring that this would not happen in the future. A copy of that resolution was provided to IRS during the audit and is ignored in the Explanation.

8.. Pages 11 - 15 of the Explanation deals with certain technical deficiencies in the 2009 and 2010 tax returns filed by IFCO. As explained to the auditor, IFCO acknowledges certain oversights in the preparation of the returns by its then accountant and has undertaken to prepare and file amended returns to correct the problems. It is notable that none of the deficiencies noted were intentional efforts to defraud or to file incorrect information. There are, however, a few matters which can be addressed here:

- The Explanation (p.12) suggests that the Viva Palestina project “was different from other activities IFCO had previously supported”. This is not true and a review of IFCO’s activities in a similar vein with relief to Haiti, Cuba and New Orleans being the prime examples;

- The Explanation (p.13) suggests that funds received by IFCO were not from gifts, grants or contributions. This is incorrect as virtually all funds IFCO received were in these categories.

9. Pages 15 - 28 of the Explanation purport to give IRS’s position on the applicable law

covering the audit and the proposed revocation. To the extent that IFCO disagrees with this review of the applicable law, its position will be set forth in a separately submitted Memorandum of Law to be filed in connection with any appeals conference.

10. The “Government’s Position”, set out in pp.28-32 of the Explanation, sets forth four grounds for IRS’s belief that IFCO’s exemption should be revoked. Each is dealt with below: individually and collectively they are not a sufficient basis for a revocation. IRS has not provided sufficient specific evidence that any or all of them have actually occurred.

*A. IFCO distributes funds which are not in furtherance of its exempt purpose*

An examination of the specific files of each of IFCO’s fiscally sponsored projects and its own programs shows that all of these are in furtherance of the charitable and educational purposes for which IFCO was formed and has operated since 1967. Contrary to the Explanation (p. 29), IFCO established the charitable and educational nature of every program and project it has been involved in through a process of reviewing written proposals from established sources. What the Explanation calls “vague and generalized statements” is not what these proposals and ideas actually contain. This view is a supposition seemingly based on a disagreement with the content of the programs and projects rather than an analysis of what they actually do. It is not a sufficient basis to form the conclusion reached.

The Explanation further suggests that IFCO disburses funds “without any substantiation of the exempt purpose or any follow-up concerning the use of the funds”. And examination of the files shows, on the contrary, that in almost all cases the exempt purpose of each program or project is contained therein and for the most part the purposes of expenditures are documented. In the limited cases where documentation is lacking, circumstantial evidence within each file as well as reports of



oral documentation as related to IRS establish that the funds were properly used. In addition, the adoption of resolutions by IFCO's Board of Directors during the audit period is substantial evidence that IFCO intends to be fully compliant with the requirements of the Internal Revenue Code and to prevent any future lapses of this nature.

To the extent that IRS believes that IFCO is operating outside of its chartered purposes, that would seem to be the province of the Attorney General of the State of New York, rather than IRS.

Finally, the Explanation does not specifically point to any particular programs or projects which are not for exempt purposes. It may be surmised that IRS is referring to the Viva Palestina project or to aspects of IFCO's programs in relation to Cuba, but the Explanation is vague on this score. As such, it does not provide sufficient evidence to support revocation of the tax exemption.

*B. IFCO can not show that it engages primarily in activities which accomplish one or more exempt purposes...*

If this conclusion is based on the entire range of IFCO's programs and projects, it would simply be incorrect – the facts documented in IFCO's files, which were reviewed by IRS, shows that all of its activities were in furtherance of charitable and educational purposes. The statement in the Explanation (p. 29) that "many project files had no documentation whatsoever" is likewise incorrect. Most files have such documentation and for those which do not, archives were searched, documents found and oral explanations were made to the IRS examiner.

The Explanation specifically identifies IFCO's Caravans to Cuba and the administration of the Medical Student Scholarship Program in Cuba as being "done in violation of U.S. sanctions on Cuba". If such violations exist, as a primary matter, it is a problem for the Treasury Department's Office of Foreign Assets and Control ("OFAC") which has jurisdiction over enforcement of the

“sanctions”. Aside from the fact that nothing that the Caravans to Cuba do is illegal, OFAC has imposed no penalties on IFCO in the more than 20 years that the Caravans have been operated by IFCO. This is not a new program but is one which has been openly and notoriously carried on for that period – if OFAC has not been interested in declaring that IFCO’s activities were somehow illegal, it is not for IRS to independently make such a determination.

As a matter of law, there is a reasonable disagreement about whether the sanctions themselves are lawful and exist in violation of International Law. IFCO also believes that there is a sound theological basis for the Caravans. This scripture-based analysis treats the Cuban people as deserving of love, respect and aid in spite of purported secular limitations.

Similarly, there is serious disagreement with the notion that bringing small amounts of spending money from parents to scholarship medical students studying in Cuba (each of whom it should be noted has made a commitment to practice medicine in an under-served community in the United States) somehow violates the law or public policy. IFCO submits that none of its Cuba programs and projects are unlawful, illegal, in violation of public policy or not in furtherance of its exempt purposes to bring useful knowledge and charitable aid to humanity.

The only other specifically identified program which the Explanation points to as being not for an exempt purpose is Viva Palestina. The Explanation contains the conclusory and rather telling statement that, “There is the possibility that funds were used to assist terrorists....”

To begin with, a “possibility” is not a fact. Anything is possible! No evidence is pointed to by IRS, other than a single document from a questionable source, that the Viva Palestina program actually assisted terrorists. The more likely view is that the program provided the much needed medical aid it promised and that there is substantial evidence to support that view, as documented

in the files of IFCO which were made available to IRS and, indeed, photocopied during the audit. A "possibility" is not illegal, at least not yet.

Research discloses that no prosecution or sanction from any country in the world, including the United States, has arisen out of the Viva Palestina convoys. Certainly, this would lend credence to the argument that there is no illegality in IFCO's support for this program. If IRS is to be the sole United States government agency to seek to impose drastic consequences for what other parts of the government have not suggested is illegal or in violation of public policy, then such a determination should be made in another forum rather than in attacking a program which tried to scrupulously follow the law. As noted, IFCO solicited legal counsel's advice about whether the medical aid contemplated violated any existing law or regulation before agreeing to become involved.

The Explanation notes that IFCO declined to provide any testimonial support for the audit of the Viva Palestina program. Indeed, this was the only aspect of the audit where such reluctance was expressed. The lack of testimonial evidence in connection with an audit where an arm of the United States government is investigating alleged material support for terrorism is not surprising in view of the legal posture of the federal material support criminal statute. If IRS could grant immunity or otherwise guarantee that no testimonial evidence from an IFCO officer, Director, or employee would ever be used in a prosecution based on the material support statute, that would solve the problem. Until that occurs, the refusal to provide testimonial evidence about this particular program has to stand as a reasonable assertion of constitutional rights.

In no other instance during the audit was there a refusal to provide full explanations or answer questions about IFCO's programs, projects, finances and practices. The founded assertion of a constitutional right should not be the basis for revoking a tax exemption, particularly where



substantial documentary evidence exists to fill in the gap.

*C. IFCO does not retain control and discretion as to the use of contributed funds...*

Through its policies and procedures, there is substantial evidence that IFCO does maintain control and discretion over funds. Each sponsored project is required to abide by the terms of its accepted proposals and purposes for which grants are made according to a letter each receives when IFCO accepts the project as being within its own goals and purposes. Receipts are required where IFCO administers the funds and documentation is required when funds are transferred for each projects' administration. The files submitted to IRS on this protest/appeal prove that is the case. Further, oral documentation in the limited cases where no written materials were available was sufficient for IFCO's purposes where the relationship was trusted. As a result of this audit, such oral documentation is no longer allowed per Board policy but what had occurred in the past does not show an organization out of control about where its funds are going but rather a careful shepherding of the uses to which the funds were put. Contrary to the Explanation's assertion (p.30) that IFCO could only "speculate" about where the funds were going, IFCO knew where the funds were going and what use was being made of them. There is no support for IRS's position.

*D. IFCO does not maintain records...*

As noted above, IFCO does maintain records not only of the reasons for approving a particular program or project but also for the resulting expenditures. These records were made available to IRS for the audit and remain available for this review. They show specific projects and programs with specific exempt purposes and expenditures in furtherance of those purposes. IFCO is not a blind "conduit" but rather an active and interested partner in projects and programs which further its own purposes. The discussion above about how IFCO has operated in the past and intends

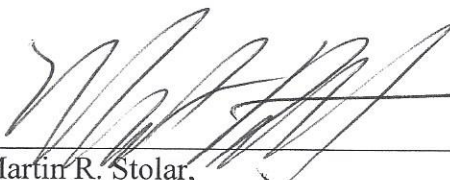
to operate in the future shows that IRS's conclusions are not supported in fact.

11. In summary, the IRS position is based on speculation and supposition rather than the facts. The IRS position appears to be based on opposition to the Viva Palestina and Cuba programs with which IFCO was, and remains, involved. The opposition appears to be of a political nature, disapproving and disagreeing with the content of the programs and projects instead of the manner in which they are approved and conducted. Such a content-based position is improper for IRS and undermines a neutral application of the tax laws.

12. IFCO also reserves the right to provide supplemental information in connection with this submission where appropriate.

The undersigned is duly appointed legal counsel for IFCO and submits this protest/appeal on behalf of the organization. The facts as stated in this document are true to the best of my knowledge which is based on a review of the records in question and conversations with various individuals associated with IFCO whom I believe to have related true and correct information.

Dated: New York, NY  
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