

THE RUTHERFORD INSTITUTE

Post Office Box 7482
Charlottesville, Virginia 22906-7482

JOHN W. WHITEHEAD
Founder and President

TELEPHONE 434 / 978 - 3888
FACSIMILE 434 / 978 - 1789
www.rutherford.org

November 30, 2011

Mr. Robert S. Mueller, III
FBI Headquarters
935 Pennsylvania Ave, NW
Washington D.C. 20535-0001

Dear Mr. Mueller:

The Rutherford Institute, a nonprofit civil liberties organization, has been contacted by Michael Marcavage regarding his inclusion in the Terrorist Screening Database, as well as a current investigation by the FBI into his activities. We hereby request that he be removed from this list, that you provide the reasons for his inclusion in the same, and that you effect an immediate halt to any ongoing investigation that is based solely on the exercise of rights protected by the First Amendment to the United States Constitution.

Mr. Marcavage is the founder and director of Repent America (RA), an evangelism ministry whose mission is the public proclamation of the Gospel. He, on his own and through RA, has a long history of peacefully and legally expressing his sincerely-held religious beliefs. Mr. Marcavage's activities consist primarily of traveling the country to preach the Gospel in traditional public forums, distribute Christian literature, and engage in individual discussions. Though he has been involved in a number of Free Speech lawsuits—many of which have been resolved in his favor—none of them involve advocating for violence or terrorism. His peaceful, legal expression of these religious beliefs is the focus of special protection under the First Amendment.

Unfortunately, despite this history of peaceful and constitutionally protected advocacy, it has come to our attention, on reliable information, that Mr. Marcavage has been placed on the Terrorist Screening Center's (TSC) Terrorist Screening Database ("terrorist watch list"). This is a secret list which can hamper one's ability to travel and result in heightened governmental surveillance. Mr. Marcavage's placement on such a list undeniably results in a pronounced chilling effect on his expressive activities.

Under Homeland Security Presidential Directive 6 (HSPD-6), in order to be placed on the terrorist watch list an individual *must* be known to be a terrorist or *must* be reasonably suspected of being a terrorist. Mr. Marcavage is a law-abiding American citizen who has never been involved in terrorism nor associated with any terrorist organizations. In fact, the very idea of terrorism is repugnant to the religious faith which Mr. Marcavage has devoted his life to proclaiming. There is no legitimate reason why an American citizen such as Mr. Marcavage, who has devoted himself to peaceful advocacy, should be placed on this type of secretive suspect list.

It has been alleged that Mr. Marcavage is a member of or has ties with an alleged anti-abortion group known as the "Army of God". Mr. Marcavage is not a member of this group, nor is it even clear that such a group exists. While there are undoubtedly anti-abortion individuals who have and do advocate violence in support of their cause, Mr. Marcavage has never done so, and has never supported those who do. In any case, he is not a member of this organization, nor does he have any familiarity with it.

Nonetheless, the FBI has recently been contacting a number of Mr. Marcavage's friends and associates to request "interviews." It is believed that these interview requests are related to Mr. Marcavage's status on the terrorist watch list.

As an organization dedicated to the protection of civil liberties, it is of particular concern to The Rutherford Institute that the FBI may be targeting individuals like Mr. Marcavage for placement on this type of watch list simply because they engage in peaceful expression of controversial—albeit non-violent—viewpoints. This sort of secret investigation, which appears to be based upon inclusion on a secret list for a secret reason, is antithetical to the principles of a free society. It has a chilling and deleterious effect on free speech rights. Mere speech, which does not include advocacy for violence, should not result in disturbing, intrusive investigations and surveillance by a secretive police force.

While protecting Americans from those who would commit violence against them is a worthy goal, a goal of arguably greater worth is respecting the individual liberties that are the hallmark of our great nation. Chief among those liberties are the freedoms to exercise one's religion and to espouse one's opinions—be they popular or unpopular.

We hereby request that you immediately take the following actions:

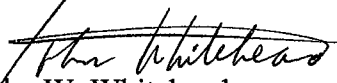
- Confirm or deny that Mr. Marcavage has been placed on a terrorist watch list;
- If you confirm this information, provide the reasons why he is suspected of terrorism-related activities;
- If Mr. Marcavage has, in fact, been placed on such a list based solely upon his protected, non-violent First Amendment expression, remove his name from the list immediately;

Robert S. Mueller, III
November 30, 2011
Page 3

- Immediately cease any "investigation" of Mr. Marcavage, his friends and associates that is based solely upon protected, non-violent First Amendment expression.

We request your response by no later than the close of business on Friday, December 16, 2011.

Sincerely Yours,



John W. Whitehead
President