

**ANTI-MONEY LAUNDERING: BLOCKING
TERRORIST FINANCING AND ITS
IMPACT ON LAWFUL CHARITIES**

HEARING
BEFORE THE
SUBCOMMITTEE ON
OVERSIGHT AND INVESTIGATIONS
OF THE
COMMITTEE ON FINANCIAL SERVICES
U.S. HOUSE OF REPRESENTATIVES
ONE HUNDRED ELEVENTH CONGRESS
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ANTI-MONEY LAUNDERING: BLOCKING TERRORIST FINANCING AND ITS IMPACT ON LAWFUL CHARITIES

Wednesday, May 26, 2010

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON OVERSIGHT
AND INVESTIGATIONS,
COMMITTEE ON FINANCIAL SERVICES,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:03 a.m., in room 2128, Rayburn House Office Building, Hon. Dennis Moore [chairman of the subcommittee] presiding.

Members present: Representatives Moore of Kansas, Lynch, Klein, Adler, Kilroy, Driehaus; Biggert and Paulsen.

Also present: Representatives Ellison, Al Green of Texas; Castle and Royce.

Chairman MOORE OF KANSAS. This hearing of the Subcommittee on Oversight and Investigations of the House Financial Services Committee will come to order.

Our hearing this morning is entitled, "Anti-Money Laundering: Blocking Terrorist Financing and Its Impact on Lawful Charities." This is our 13th O&I hearing of the 111th Congress.

We will begin this hearing with members' opening statements, up to 10 minutes per side, and then we will hear testimony from our witnesses for each witness panel. Members will have up to 5 minutes to question our witnesses.

The chairman advises our witnesses to please keep your opening statements to 5 minutes to keep things moving, so we can get to members' questions. Also, any unanswered questions can be followed up in writing for the record. And I understand Mrs. Biggert has a request.

Mrs. BIGGERT. Yes, Mr. Chairman. I would like to ask unanimous consent that the gentleman from Delaware, Mr. Castle, and the gentleman from California, Mr. Royce, be—participate in the subcommittee there on the Financial Services, but not—

Chairman MOORE OF KANSAS. No objections on this side. If there are no objections on your side, it is so ordered.

Without objection, all Members' opening statements will be made a part of the record. And I will recognize myself for up to 3 minutes on an opening statement.

Today's hearing is the second in a series of hearings we are having focusing on oversight efforts to combat money laundering and terrorist financing. Last month, our subcommittee held a hearing

reviewing several FinCEN oversight reports examining how FinCEN could better interact with law enforcement agencies, as well as improving the data quality collected from suspicious activity reports.

While the May 1st Times Square bomb attempt is not the subject of today's hearing, and is currently being investigated by Federal authorities, the incident is a valid reminder that, despite nearly 9 years passing since the tragic September 11, 2001, terrorist attacks, there continue to be those who wish to do us harm.

Our government must use every tool available to shut those terrorist groups down, including cutting off the financing that supports them. Today, we are examining the Treasury Department's efforts to block all financing that goes to terrorist organizations that seek to do us harm, and how these efforts impact lawful, law-abiding charities who only want to use contributions for legitimate and good purposes.

Even if 1 percent of charity funds are going to a terrorist organization, our government is required by law to shut that source of funding down, as we should. But there are many good organizations who want to fully abide by the law, and ensure that 100 percent of their money is used only for good efforts.

So, I look forward to learning what steps Treasury has taken with respect to those lawful charities, and encouraging charity organizations to fully abide by the law. I am pleased the Treasury Department was able to provide Deputy Assistant Secretary Glaser to testify on these important issues, and I look forward to hearing the views of our second panel of witnesses, as well.

I now recognize for 5 minutes the ranking member of the subcommittee, my colleague and friend from Illinois, Ranking Member Judy Biggert. Mrs. Biggert?

Mrs. BIGGERT. Thank you, Chairman Moore, and thank you for holding this important hearing. As we have learned, terrorists will stop at nothing to carry out their plots to kill innocent citizens, and terrorists have financed their attacks through the formal banking system. They have also used informal systems, for example. Terrorists sometimes use the hawala system, an ancient method of underground banking, in which couriers transfer money through networks.

Terrorists also have used charities to finance their schemes, which is the focus of today's hearing. Charitable contributions in the United States are vital to both domestic and international humanitarian aid. They range from organizations that help homeless children in our local communities to families abroad who seek basic access to water, shelter, and education, or are victims of tsunamis, earthquakes, and other natural disasters.

It is important that while our intelligence, military, and law enforcement communities work to free terrorist funds and prevent terrorism, we also allow for the legitimate and important philanthropical functions of charities to continue. There must be a balance.

I commend our government officials, some of whom we will hear from today, for their work to stop the flow of funds to terrorist organizations. Please know that, while criticized heavily by some,

your work has saved, and could, in the future, save many American lives. Thank you for your service.

At the same time, I ask that you continue to work with the more than 1.5 million legitimate U.S. charities that are clearly not involved in funding terrorists, but provide important services to people in need, both here at home and abroad.

Treasury officials should continuously work to improve communications with charities, as well as guidelines or best practices, so that charitable organizations have a clear understanding of the rules of the road. Front groups masquerading as charities can never be allowed to compromise national security. National security must be everyone's top priority.

With that, I look forward to hearing from today's witnesses, and I yield back.

Chairman MOORE OF KANSAS. Thank you. The chairman next recognizes for 3 minutes Mr. Lynch of Massachusetts.

Mr. LYNCH. Thank you, Mr. Chairman. Good morning. Mr. Chairman, I want to thank you and Ranking Member Biggert for holding this hearing today. I would like to welcome our first panel witness, Mr. Glaser, and thank him and the other panelists for helping the committee with its work.

This hearing is particularly timely, in light of the recent Times Square bombing plot. As law enforcement investigates the financing behind this act of terrorism, which involves my own district and the State of Massachusetts, the issue of terrorist financing has again raised to the surface.

In the recent past, the law enforcement community has applied increasing pressure on investment networks and various types of funding vehicles. The result of this escalated enforcement has forced financing to enter informal channels, be it a hawala or a hundi, as may have been the case in the Times Square bombing, or others like informal charitable networks.

Charities have raised concerns, legitimate concerns, that actions have been taken against associations for engaging groups that were not explicitly designated by the Treasury as terrorist organizations. Treasury has worked to engage charitable organizations with good intentions. We must not allow punitive measures to force charitable activity underground.

There is a delicate balance and a reasonable zone of operations in allowing charitable donations to continue, and to prevent the financing of groups or individuals who plan to attack the United States, or our colleagues and allies overseas. I appreciate the difficulty in finding this delicate balance.

I want to comment the Treasury, especially FinCEN and OFAC. I have worked with them in a number of countries in the Middle East, and they do tremendous work, often unappreciated, but certainly highly valued in my eyes.

I look forward to hearing the testimony of our potential policy solutions, and to help address this important issue. I thank you, Mr. Chairman, and I yield back.

Chairman MOORE OF KANSAS. Thank you to the gentleman from Massachusetts. The chairman next recognizes the gentleman from California, Mr. Royce, for 3 minutes.

Mr. ROYCE. Let me, Mr. Chairman, start with the observation that the starting premise of this is all wrong. The title of this hearing is, "Blocking Terrorist Financing and Its Impact on Lawful Charities." I wish we were more concerned about blocking terrorist financing and its impact on terrorist organizations.

We have sanctioned less than a dozen charities in the many years since 9/11. Mr. Chairman, the fact of the matter is that there are many, many individuals who have a cold, calculating, and brutal resolve to kill as many Americans as possible by whatever means possible. And charities have been a proven resource for these individuals.

Technocrats at the Multilateral Financial Action Task Force agree. As one witness will point out, this is not some reflexive equation of Islamic charities with terrorism. Dr. Levitt goes on to note that this critique flies in the face of extensive available evidence, and simply falls flat.

We have to balance freedom to give with the freedom to live and breathe. In this country, the Holy Land Foundation was found guilty of 108 counts, including support of terrorism, money laundering, and tax fraud. Millions went to Hamas. That some lawful charities face extra burdens is an unfortunate but needed response. No apology is needed.

In March, Youssef Nada, the self-described foreign minister of the Muslim Brotherhood, was quietly removed from the UN Security Council's terrorist financier list. Of course, this individual has been involved with al-Qaeda. He's been involved with Hamas. And the Brotherhood seeks the worldwide creation of an Islamic caliphate. All of these listings and delisting decisions have to be unanimous, meaning the Obama Administration okayed this. This is of concern to me, and it should be of concern to many Americans.

I yield back the balance of my time, Mr. Chairman.

Chairman MOORE OF KANSAS. Thank you. Mr. Castle from Delaware is recognized next for 2 minutes.

Mr. CASTLE. Thank you, Mr. Chairman. And thank you, Mrs. Biggert, and thank you for allowing me to sit in on this. I am pleased to be here for this hearing, whether it's under its original name, or the new name that Mr. Royce has given it. I think it's an important subject matter.

I believe strongly we must continue to examine current efforts to combat terrorist financing. And I recently joined Representative Lynch, who is here, in requesting a hearing to determine whether our efforts here in the United States are keeping pace with evolving trends terrorists are using to fund their activities.

This issue needs greater scrutiny, particularly in light of reports that the attempted Times Square bomber used an informal banking system—used hawala networks to fund his operations. Today's hearing will focus on the impact on charitable organizations of blocking funds to terrorist organizations overseas.

Regardless of whether money is being funneled to other countries or coming into the United States, we must have the proper systems in place to detect and prevent money from reaching the hands of terrorists. Without the compliance of organizations in the business of collecting and transferring money, our efforts to keep extremists from doing harm to innocent civilians would surely be futile.

I look forward to hearing from today's witnesses, and whatever fruit we can garner from that to prevent these problems in the future. I yield back, Mr. Chairman.

Chairman MOORE OF KANSAS. Thank you. I am pleased to introduce our first witness this morning, Mr. Daniel Glaser, who currently serves as the Deputy Assistant Secretary for Terrorist Financing and Financial Crimes at the Treasury Department.

Without objection, sir, your written statement will be made a part of the record. Mr. Glaser, you are now recognized for 5 minutes.

STATEMENT OF DANIEL L. GLASER, DEPUTY ASSISTANT SECRETARY FOR TERRORIST FINANCING AND FINANCIAL CRIMES, U.S. DEPARTMENT OF THE TREASURY

Mr. GLASER. Thank you, Chairman Moore, Ranking Member Biggert, and distinguished members of the committee. I thank you for the opportunity to appear before you today to discuss the Treasury Department's efforts to protect charities from abuse by terrorists, and our outreach efforts to the charitable in Muslim-American communities.

Treasury recognizes and values the importance of charitable giving. Charitable giving and volunteerism have a long tradition in the United States, and our country is a leader in the world year after year in charitable donations. Our generosity unites Americans of all backgrounds and religious traditions.

However, the sad truth is that terrorist organizations such as al-Qaeda, Hamas, and Hezbollah have established and used charities, and have exploited well-intentioned donors. Terrorist groups such as these use charities not just to raise funds, but as an integral component of their organizations and networks.

The Treasury Department has been given the responsibility by Congress and the President to protect American lives and security by using all lawful means to disrupt and dismantle terrorist support networks wherever we find them. Our primary tool in meeting this responsibility is through the application of targeted financial sanctions under the International Emergency Economic Powers Act, or IEEPA.

More than 30 years old, IEEPA forms the legal framework of most of our targeted financial sanctions programs. As I explained in great detail in my written testimony, we have developed a well-established process for implementing IEEPA designations that contains procedural safeguards, including licensing provisions and delisting procedures.

All final agency actions taken under IEEPA are subject to judicial review. And over the years, the courts have a strong record of upholding the statute's constitutionality and our application of it. The collective efforts of the law enforcement community over the past decade have been successful in making it more difficult for terrorist organizations to raise funds in the United States.

Treasury has contributed to this effort, including by applying targeted financial sanctions to a total of eight U.S. charities. These charities were not unwitting victims. We believe that our actions contributed to disrupting the terrorist networks that those charities

supported, and protected well-intentioned donors who had no desire to support terrorist groups.

That said, we understand that the ongoing terrorist threat and U.S. enforcement actions, including Treasury designations, have had an unfortunate and unintended chilling effect on the charitable giving of Muslim-American communities, particularly as it relates to the legitimate desire to provide support to needy communities in risky areas.

We take this problem seriously, and we regard it as our responsibility to work with the charitable and Muslim-American communities to mitigate the chilling effect, and help create what we call a safe giving space for well-intentioned donors. These efforts have included attempts to provide the charitable sector with relevant information and guidance, and also to create alternative mechanisms for charitable giving to populations in need in high-risk areas.

It is important to remember, however, that Treasury does not have, nor do we seek, anti-money laundering or counterterrorist financing supervisory authority over the charitable sector. For that reason, it is vital that we form a strong partnership with the charitable sector to address this issue of mutual concern. We are confident that such a partnership, based on mutual respect and an understanding of the various perspectives and complexities relating to this issue, can succeed in demonstrating that the choice between charity and counterterrorism efforts is a false one.

Thank you for the opportunity to speak with you today. I would be happy to answer any questions that you have.

[The prepared statement of Mr. Glaser can be found on page 51 of the appendix.]

Chairman MOORE OF KANSAS. Thank you, Mr. Glaser, for your testimony. I recognize myself for 5 minutes for questions.

Mr. Glaser, so everyone is clear, in a situation where a charity organization uses 99 percent of its money for legitimate, lawful, charitable purposes, and even just 1 percent is going to al-Qaeda or some other terrorist organization, the Treasury Department still makes every effort to shut that financing down. Is that correct, sir?

Mr. GLASER. Absolutely, Mr. Chairman. The question is not what percentage of funds are going to a terrorist organization. The question is whether the charity or whatever the designated entity might be is owned or controlled by or acting for or on behalf of a terrorist organization. And that's the test we would put to it, not what percentage of the funds are traveling to the organization.

Chairman MOORE OF KANSAS. Would you elaborate on—I guess you already have. I was going to—the second question, I think you have already answered that.

Mr. Glaser, how has Treasury's voluntary best practices for U.S.-based charities—a document that is on your Web site—been received by the charity organizations you communicate with—are they useful to these lawful charities?

Are there other proactive steps Treasury can take to ensure law-abiding charities have every opportunity to fully understand how best to follow the law?

Talk about that, if you would, please, sir.

Mr. GLASER. Thank you, Mr. Chairman, for that question. I think that our voluntary best practices, or voluntary guidelines, have

been a work in progress. We released them many years ago. And since that time, we have had an ongoing dialogue with the charitable community on making sure they are as useful as possible to that community. We have updated them twice since they were initially released. And, in fact, we are working now to update them again and to continually improve them.

As I said in my oral remarks, we don't have supervisory authority over the charitable community. So it's important that we find other ways to communicate with them and to work with them, and we try very hard in that regard. And we think that the guidelines are a good way of doing that.

We do understand that there are some people in the charitable community who have problems with some aspects of them, and that's something that we want to talk to them about, and that's something that we want to continue to engage with them on, and continue to improve, because they are going to be most useful if and when they are perceived as a joint effort from Treasury and from the charitable community.

That's not the only tool that we have. It's not the only mechanism that we have to try to achieve the sorts of goals that you're talking about, Mr. Chairman. We also try to provide information in other ways, in terms of typologies, in terms of information, in terms of dialogue.

There is another important whole set of initiatives that we are trying to establish regarding alternative relief so that as certain channels close down for all the right reasons, we can work with the charitable community to make sure that there are legitimate channels that remain open. And I think that's an idea that frankly, not enough time has been spent on, and something that we really want to kick up to the next level.

Chairman MOORE OF KANSAS. Thank you, sir. And last question, when it comes to shutting down terrorist financing, I imagine there is a lot of—I would hope there is a lot of coordination between other government agencies that the Treasury Department deals with.

Mr. Glaser, would you describe briefly, sir, how Treasury interacts with other agencies when it comes to blocking terrorist financing? Are there barriers that should be removed, or any improvements that could be made, with respect to interagency communications, from Treasury's perspective?

Mr. GLASER. Thank you, Mr. Chairman. I think it's a good question, because we sometimes speak—and even in my testimony I probably used the term “Treasury designations.” But these really are U.S. Government actions in the larger sense of the term.

There is a—particularly as it relates to foreign designations, but even with respect to U.S. designations, as well, there is a vibrant interagency process, where, as a target is examined, we ask ourselves collectively, “What is the right tool to use? What is the right action to take?” And there is a joint decision taken from all interested relevant U.S. agencies.

Once a decision is made to proceed along the lines of targeted financial sanctions, there is a well-established process that includes, in particular, the Treasury Department, the Justice Department, and the State Department. The collection—the assembly of the ad-

ministrative record is reviewed by lawyers from all three of those Departments. And then, obviously, there is a lot of talk about timing, and making sure that everything is coordinated as well as possible.

So, I do think we have very good coordination and interagency—well, very good interagency coordination as regards this process.

Chairman MOORE OF KANSAS. Thank you, sir. Next, the chairman will recognize for up to 5 minutes for questions the ranking member, Mrs. Biggert.

Mrs. BIGGERT. Thank you, Mr. Chairman. Mr. Glaser, does the Treasury believe that terrorist financing is a big problem within the charitable sector?

Mr. GLASER. That's a good question. I think that we have—within the United States, I think we have done a really good job, frankly, of substantially reducing the ability of charities within the United States to support terrorist organizations. I don't think we want to rest on our laurels, but I think when you look at the situation today compared to the situation before 9/11, I think it has become much harder for terrorist organizations to raise funds in the United States.

With respect to the world as a whole, I do think charities are an integral part of terrorist organizations, particularly when you look at charities—a lot of charities in the Gulf, even some charities in Europe. I think it is a problem that we continue to face and continue to work with our partners on. But if you're—

Mrs. BIGGERT. Yes. Then what level of coordination takes place between the United States and other nations on the issue? Do the bulk of other nations have adequate infrastructure in place to help combat the illegal moneyflows through charitable channels?

Mr. GLASER. There is quite a bit of international coordination that happens on a variety of levels. Mr. Royce made reference to the Financial Action Task Force, and that is the premier standard-setting body in the world for anti-money laundering and counter-terrorist financing standards, and we have done a lot of work in the FATF, both on typologies and on establishing international standards. I am the head of the U.S. delegation—

Mrs. BIGGERT. Okay.

Mr. GLASER. —to the FATF, so I have been personally involved in that.

In addition—and I think this is really important and often overlooked—there is a considerable amount of work that has been done in the Middle East/North Africa region. There is an organization called MENAFATF, the Middle East North Africa Financial Action Task Force. I was just at a meeting of the MENAFATF in Tunisia 3 or 4 weeks ago, and MENAFATF has issued its own best practices and guidelines with respect to charities.

So, there is quite a bit of work that's done on that level. There is also, obviously, a lot of work that's done bilaterally. I am a part of a lot of it. I have traveled throughout the Middle East, throughout Europe. We work with the EU on this. We work directly with partners such as the Brits and the Saudis.

There is—it's not a particularly controversial proposition to say that these charities are involved in this type of activity, so it's real-

ly just about working with our partners to find solutions, and it's something we spend a lot of time on.

Mrs. BIGGERT. Great. Then some in the nonprofit community say that there has been a negative effect on charitable giving. Do you agree? And what has Treasury done, if there has been any chilling effect?

Mr. GLASER. I have no doubt that there has—I don't have numbers, but I have no doubt that there has been a chilling effect. And, as I said in my testimony, it's something that troubles us, and it's something that we feel we have a responsibility to work with the charitable community to mitigate.

And we are trying to do everything we can in that regard. We try to do it through guidance, we try to do it through best practices. We try to do it through providing as much information as we can. Frankly, we try to do it through shutting down charities that we think are involved with terrorist organizations, to take those off of the table.

We also—again, we have in the past worked with the charitable community on establishing alternative relief systems, alternative relief mechanisms. There was something back in the summer of 2008 that we started called, "The American Charities for Palestine." That was sort of a pilot project.

We would like to build on that concept so that we could work with the charitable community to make sure that Americans, Muslim-Americans and any American who wants to give to places like the Palestinian territories or earthquake relief in Pakistan or anywhere, has the opportunity to do so. We regard that as a responsibility of ours, and we work very hard to try to achieve that.

Mrs. BIGGERT. Do you see that the charities are still being abused by terrorists and other illicit actors? Has it slowed down, or—

Mr. GLASER. Again, globally, I don't think it has slowed down. I think that there are charities throughout the world that continue to operate as integral parts of terrorist organizations.

Domestically, as has been pointed out, we have designated 8 charities since 9/11. We have not designated a Muslim charity in almost 3 years. So I think that we have had success, and I think it has become a lot harder to raise funds within the United States for terrorist organizations.

Mrs. BIGGERT. Thank you. I yield back.

Chairman MOORE OF KANSAS. Thanks to the gentlelady. And next, the chairman recognizes for 5 minutes Mr. Lynch for questions.

Mr. LYNCH. Thank you, Mr. Chairman. Mr. Glaser, one of the other hats that I wear, along with Mr. Royce of California, I co-chair the Task Force on Terrorist Financing and Non-Proliferation.

The initial goal of our group, working with Treasury, was really to look at the formal, established finance system, and to try to encourage countries—and we spent a lot of time in Jordan, Morocco, Tunisia, Afghanistan, and India—to adopt anti-money laundering statutes that would hopefully drive terrorist financing out of the legitimate financing system. And I think that you have had some good success. FATF has had some great success, I think, considering where we started before 9/11.

Now, I think what has happened is we have seen, since the official banking system has been closed off in larger respects, now we have seen this migration to these informal value transfer systems. I'm talking about the hawalas and the hundis that—in some countries they're registered, in some countries they're not. It's sort of a mish-mash.

What complicates things is there is a religious dimension to the use of hawalas in fulfilling Zakat by good Muslims. So, I guess my question is, how do we take that next step?

Now that we have the formal banking system going in the right direction with know-your-customer protocols, and you have a pretty solid matrix, a risk matrix for these charities, how do we—I guess how do we drive whatever is left of that terrorist financing in those informal transfer systems and these other charities, how do we drive the money out of that system?

It seems to be more insidious, more pernicious, tougher to get at. But, that's really what we would have to do.

Mr. GLASER. Thank you, Mr. Lynch, and thank you for your and Mr. Royce's leadership on this issue. We are very well aware of all the work that you have done in this area, and we do appreciate it.

When you think about how terrorists—terrorist organizations could move money, could transfer money around the world, when you think about how anyone could move or transfer money around the world, there are really only four ways that it could be done, when you think about it: it could be done through a formal financial institution; it could be done through an informal financial institution; it could be done through trade; or it could be done through the physical movement of cash. Those are the only four ways to transfer value that I could even imagine.

Now, there are enormous amounts of variety within each of those. But we need to focus on each of those four to make sure that we have the systems in place to detect and deter money laundering and terrorist financing through the formal sector, the informal sector, through cash couriers, and through trade. And we try to focus on all of them.

With respect to your specific question on the informal sector, we have tried to take a sort of a three-category approach to it. The first is to regulate with what we call a light touch. There are approximately 40,000 registered money service businesses in the United States. Not all of them would meet the definition of hawala. Hawala is an Arab word for a particular style of money transfer. And you said "hundi." There are other words for it in other parts of the world. But what we try to do is register them, educate them, and bring them up to the surface.

A lot of these service providers—most of these service providers—are performing perfectly legitimate, legal transactions. But what we want to do is reach them so that we can communicate with them, explain to them what the laws are, and try to get them to be more a part of the system.

Frankly, the broader solution to the issue is more of a systemic, almost generational solution of making sure that there is affordable financial services provided to all communities throughout the world. Because the reason why these types of services actually exist is because they are more convenient for, say, a Pakistani im-

migrant who wants to send money to his family in a village in Pakistan. It's oftentimes going to be easier to do that through some sort of form of alternate remittance.

Mr. LYNCH. Right.

Mr. GLASER. So we try to do all that. We have tried to set international standards. But I completely recognize that this is an issue that we have not, by any stretch of the imagination, solved. And it is something that we really do look forward to working with you and other Members of Congress on devising solutions for.

Mr. LYNCH. Thank you. I yield back.

Chairman MOORE OF KANSAS. Thank you, sir. The chairman will next recognize the gentleman from Minnesota, Mr. Paulsen, for 5 minutes.

Mr. PAULSEN. Thank you, Mr. Chairman. And, Mr. Glaser, knowing that we have to have an effective regime to monitor terrorist financing, and knowing that funding for the attacks for September 11th came through so-called nonprofit or so-called charitable organizations, that that's the case, and you talked about the four different access points to move resources for funding terrorism, how much more do we really know about terrorist financing today than we did 10 years ago, before these laws took effect?

And I just want to set the table for you, just to sort of explain. Have the current laws in place now really helped us gain the knowledge necessary to combat some of the challenges that we have been facing?

Mr. GLASER. Thank you for the question, Mr. Paulsen. I think we do know quite a bit more about the way terrorist organizations finance themselves. I think we know a lot more about the subject of terrorism and counterterrorism broadly than we did before 9/11. There has certainly been a lot more attention and resources devoted to it, and I think we have learned a lot of lessons.

Charities are by no means the only way that terrorist organizations raise funds. They raise them through individual donors, they raise them through state sponsors. They raise them through legitimate business, they raise them through crime. They raise them through taxing populations. There are all sorts of ways that terrorist organizations raise funds. And we need to focus on all of them.

But I do think we understand these issues better, and I think we have had success. I think that terrorist organizations such as Hamas and al-Qaeda are in far worse financial shape today than they have ever been in the past. And I think that's due to the efforts not just of the United States Government, but of the entire international community that has been working very hard on this.

Mr. PAULSEN. And would you go so far as to say that the information that has been provided by these laws now has given us enough information to help prevent another attack, to certainly prevent the resources from going forward to prevent another attack from occurring, or at least made it much more difficult?

Mr. GLASER. I think they have made it more difficult. I wish I could say that I promise you that these laws could prevent another attack. Unfortunately, that's not a promise anybody could make.

But I—in particular, we do our part at the Treasury Department, but in particular, people like the FBI and other parts of the law

enforcement and national security community work every day to do everything they can to prevent a next attack.

Mr. PAULSEN. I appreciate that. And, Mr. Glaser, there is testimony this committee will hear from in the next panel that's coming up that suggests that the Treasury Department is not set up to effectively monitor the charitable sector. And I just wanted to see if you agreed with that.

Between FinCEN and the OFAC, the OIA, and the other numerous intelligence agencies that you just mentioned, too, I just want to—do you think you lack the resources to effectively combat terrorist financing right now? And how do you feel about that?

Mr. GLASER. Thank you, Mr. Paulsen. We are not set up to monitor the charitable community. That's not our responsibility. That's not what we do. That's not what we seek to do.

We are set up—and in 2004, Congress, working with the Administration, created the component of the Treasury Department that I am a part of, the Office of Terrorism and Financial Intelligence, and I think it was a revolutionary decision—we are the only finance ministry in the world that has an office like TFI, and that has allowed us to be a real leader throughout the world in addressing issues like this.

So, I do think we are well set up to address issues related to terrorist financing as best as we can, and we work very hard on that. I appreciate the support that we have gotten, and I think we are appropriately set up. But I do agree that we are not set up to monitor charities, nor do we seek to monitor charities.

Mr. PAULSEN. Thank you, Mr. Chairman. I yield back.

Chairman MOORE OF KANSAS. Thank you, sir. The chairman will next recognize the gentleman from New Jersey, Mr. Adler, for 5 minutes.

Mr. ADLER. Thank you, Mr. Chairman. I want to follow up on Mr. Paulsen's question about resources, maybe shift it a little bit to whether there are legislative needs that you would seek from us to empower you to do a better job with your limited role. I understand your point that it's a limited role. Are there things you need from us to give you more power or more direction to achieve our national security interests, as it has been laid out in the discussion this morning?

Mr. GLASER. Thank you for the question, Mr. Adler. No, I think what we need from Congress is what we're getting from Congress, which is a close attention to this problem. Hearings like this, I think, are important and helpful in bringing out these issues and stimulating public discussion and stimulating debate. I think it is all very important and healthy.

And I think Congress is playing an absolutely vital role in its oversight function. But I don't—there are no particular pieces of legislation that I would have to offer to enable us to do our role better. I think we have what we need right now.

Mr. ADLER. Is that a consensus opinion of the Department, or is it—I want to make sure it's beyond just your opinion, as much as I respect your opinion, that we—I want to have the comfort that we are doing what we should do to empower you to do what you need to do to keep our country safe.

Mr. GLASER. Yes, I am speaking for the Department.

Mr. ADLER. Thank you. I yield back.

Chairman MOORE OF KANSAS. The chairman thanks the gentleman. And next, the chairman will recognize Mr. Royce of California for 5 minutes.

Mr. ROYCE. Mr. Glaser, Doug Farah is the former Washington Post bureau chief who has dug pretty deep on these issues. And, as a matter of fact, not just on terror finance, on the issue of conflict diamonds he helped bring President Charles Taylor of Liberia to the bar of justice for war crimes.

But he wrote recently, "So far, the Muslim Brotherhood is winning every battle, and rapidly recapturing the ground lost in the dark days after 9/11 when their role in radicalization and financing of radical Islam was recognized and confronted, at least briefly."

I want to go back to my opening remarks, where I brought up the case of Youssef Nada, foreign minister of the Muslim Brotherhood, as he calls himself, who says that—as we know, he was removed rather quietly from the UN Security Council's terrorist financier list. He was involved with al-Qaeda. He was involved with Hamas. And to be removed from that list, it has to be unanimous. So, that would mean that the Obama Administration okayed this. And I wanted to ask you why, or if you knew why.

Mr. GLASER. Thank you, Mr. Royce. To the first part of your question, and then to the second part of your question. I do agree with you, radicalization is a really important issue. I think it's, frankly, one of the next big issues that we, as a government—we are focusing on it, but I think it's something that we really, as we make progress in other areas, I think it's an issue for us to pay even closer attention to.

When we talk about the role that charities and other groups play in terrorism, one of the reasons why I made some of the points that I make—and I try to make them all the time—is we're not just talking about fundraising when we talk about these terrorist networks. We are talking about radicalization. We are talking about providing logistical support. We are talking about being an integral component of a radical extremist violent network. And those are the networks that we are seeking to disrupt.

With respect to Mr. Nada, you are correct. He was delisted at the UN, and then we subsequently delisted him in the United States. Mr. Royce, I don't have any further information for you on that, but we would be happy to get back to you with information on Mr. Nada.

Mr. ROYCE. I will just repeat what I said in my opening statement on that same front. The Brotherhood, according to their charter, seeks the worldwide creation of an Islamic caliphate. And to delist somebody who was involved with al-Qaeda and Hamas gives me some concern.

I also want to point out that back in 2006, the Treasury Department designated the Philippine and Indonesian offices of the International Islamic Relief Organization, a Saudi-based charity, as terrorist-designated entities. And I think that was a welcome move, given its facilitating of funds for al-Qaeda. One individual involved in that operation was dubbed "The Million Dollar Man" by fellow jihadists, who depended upon him for the transfer of those sums of money.

But there are now reports that the International Islamic Relief Organization has reopened a U.S. chapter, this time in Florida. And its articles of incorporation says that it's intended to be the U.S. chapter of the International Islamic Relief Organization. Are you concerned about this development?

Mr. GLASER. There are a number of charities in the Gulf that we have worked very closely with governments in the Gulf on, some of which we have actually designated, like the Revival of Islamic—RIHS, Revival of Islamic Heritage Society.

With respect to IRO, we have designated certain branches of the IRO, and we have also worked very, very closely with the Saudi Government on issues relating to terrorist financing, Mr. Royce. I have testified before Congress previously on our efforts—

Mr. ROYCE. Whoa, whoa. You might be working closely with the Saudis. But last year the State Department, in its report on money laundering, concluded that Saudi Arabia continues to be a significant jurisdictional source for terrorist financing worldwide, and notes that the Saudi Government could do more to target Saudi-based support for extremism outside of Saudi's borders. And that's what we're talking about.

Mr. GLASER. Yes, I agree with that. They are still a source, their country is still a source of terrorist financing. And, like all of us, they could do more. I think they have done a lot more.

And I think that since we at the Treasury Department have been very open about identifying our concerns about Saudi Arabia, I think it's also incumbent upon us to say when we think they are doing a good job, and I think that they have greatly improved their efforts in this area.

Sure, there is a lot more they could do. And when I was in Tunisia, Mr. Royce, just a few weeks ago, the MENAFATF was discussing Saudi Arabia's evaluation report, which is a several-hundred page in-depth analysis of Saudi Arabia's legal structure and efforts in this area. I think it points out the good things and I think it points out the areas in which they still need to improve.

Mr. ROYCE. A lot of concerns. Thank you, sir.

Chairman MOORE OF KANSAS. The gentleman's time has expired. The chairman will next recognize the gentleman from Delaware, Mr. Castle, for 5 minutes.

Mr. CASTLE. Thank you, Mr. Chairman. Mr. Glaser, are you familiar with the terrorist financing report which was authorized in section 6303 of the Intelligence Reform and Prevention Act back in 2004?

Mr. GLASER. Yes.

Mr. CASTLE. We have never received that report. I have written letters to the President, and we mentioned it again—I and others have mentioned it in various intelligence activities on the Floor, etc.

Can you—what has happened to that report? That was due in 2005. Is it going to be forthcoming? Is there some reason why we are not seeing this?

Mr. GLASER. Thank you, Mr. Castle. We are aware of the requirement issue of this report, and our plan is to issue a terrorist financing report to meet the statutory requirement. There has been

a lot of internal discussion about what form this report should take. There are different aspects of it that we have struggled with.

But it is something that we know there is—we understand there is an expectation that we are going to do this, and we do plan to meet that expectation.

Mr. CASTLE. Needless to say, the date has long since passed that it was due. I would hope that these discussions could come up with a resolution, we could get that report, which may answer some of the questions which we are posing here today.

In my—another question I have is—and you mentioned it a little bit with Saudi Arabia—but in—and you also indicated that we may be the only country which has an office dedicated to this particular problem. I assume you're talking about terrorism financing when you say that. But what is our relationship with the bulk of other countries? Do they have any kind of an infrastructure or anything else in place that you can actually work with, with respect to financing issues that we are discussing here today?

I realize that's a pretty broad question, but can you give us a quick synopsis of what you see in these other countries?

Mr. GLASER. Thank you for the question. I am happy to.

To clarify what I said earlier, we are the only country with an office within a finance ministry like the one we have at the U.S. Treasury Department, in terms of being able to focus not just on terrorist financing, but on all financial components of national security issues—in particular, terrorist financing. And it has, I think, allowed us to approach issues in a more sophisticated, more aggressive way than any other finance ministry in the world, and we are very proud of that.

But there certainly are offices throughout the world—governments throughout the world—dealing with this issue in different ways, and there are offices and governments that focus on terrorist financing.

As far as our—the way we work with and cooperate with those governments, again, it happens on all—on a variety of levels. On the broadest level, on the multilateral level, there are a number of international bodies, I think most particularly the Financial Action Task Force, which I have mentioned a couple of times, which is the international standard-setting body for money laundering and terrorist financing. It is headquartered at the OACD in Paris, and it has 34 members, to include most of the largest countries in the world.

That network, then, is extended through what are called FATF-style regional bodies, which are regional FATFs that exist in every region. There is one in the Middle East, there is one in Central Asia, there is one for Asia, for South America, the Caribbean, eastern and southern Africa, west Africa, and central Africa. So, there are these FATF-style regional bodies, and those are intended to provide regional solutions to regional issues relating to this. Obviously, there is then work done at the UN. There is work done at so many different bodies on this area.

And equally as importantly is our bilateral outreach. I spend an awful lot of my time traveling throughout the world, not just on this issue, but on issues—on all national security issues the Treasury is related to, be it North Korea, be it Iran, be it counterter-

rorism, be it other issues, trying to coordinate actions, passing information to governments, trying to persuade them to take action, working with them throughout the world, doing this.

Last month, I was in the Palestinian territories working with the government of the Palestinian Authority on precisely these types of issues, and they are very, very good partners of ours.

So, there is not one forum and there is not one way of doing this. It is a full-time job to coordinate internationally and to work on all these subjects. But I think we have made good progress.

Mr. CASTLE. Thank you, Mr. Glaser. My time is up.

Chairman MOORE OF KANSAS. Thank you. I ask unanimous consent that Mr. Ellison from Minnesota, a member of the full committee, be allowed to participate and ask questions. Without objection, it is so ordered. Mr. Ellison, do you have any questions, sir?

Mr. ELLISON. Yes, Mr. Chairman, thank you.

Chairman MOORE OF KANSAS. Yes, sir. You are recognized.

Mr. ELLISON. Mr. Chairman, thank you for holding this hearing, and thank you for inviting me to attend. I am hopeful that we can improve the rules on charitable giving so that all Americans, including Muslims, can give to charity without inadvertently running afoul of the law.

Currently, the net of suspicion is simply cast too broadly. While it is crucial that we disrupt and destroy terrorist financing networks, President Obama himself acknowledged, "Rules on charitable giving have made it harder for Muslims to fulfill their religious obligation." That's why I am committed to working with Members of Congress and members in the community to ensure that everyone can fulfill their religious obligations, including Muslims, who have a duty to fulfill Zakat, which is charity.

Rules must also change so that charities can make contributions to fight poverty around the world, including in Muslim majority countries. Humanitarian aid in the Middle East, Africa, South Asia and elsewhere is crucial, so that it can—it's also an effective tool to combat terrorism.

My question is, will the Treasury Department consider implementing new rules and procedures to assist Muslim-Americans to contribute to charities?

Mr. GLASER. Thank you. Thank you, Mr. Ellison, and I certainly do agree with you that our efforts to fight terrorism over these past 10 years have made it more difficult for people to give, particularly to high-risk areas. And they should have the opportunity to do so. I completely agree with that. I think our charities do a phenomenal job, and an extremely important job in providing relief to these needy communities.

On a humanitarian level, it's important. And, frankly, on a national security level, I think it's important, as well. So there is absolutely no disagreement on that issue.

We take—as I have said before, we take our responsibility very, very seriously in this area, and we have—we are continually thinking about and trying to solve the problems that go along with this. And they are a very complicated and difficult set of problems.

The ideas that we have come up with have been to try to provide guidance to the charitable community, in terms of best practices, to try to provide information to the charitable community, in terms

of risk matrixes and typologies, and things like that. We want to—we welcome, we invite a vibrant dialogue with—

Mr. ELLISON. Let me ask you another question in that same vein.

Mr. GLASER. Okay.

Mr. ELLISON. Could Treasury direct the creation of a single, user-friendly publicly-accessible database consolidating each of the government's prohibited lists, so that donors, mosques, and 501(c)3 organizations can easily determine if a charity to which they want to donate is on a prohibited list?

Mr. GLASER. We do—Mr. Ellison, we do have on our Web site the list of designated entities. Unfortunately, the problem goes beyond that. It's not really just a question of not donating to a prohibited entity. As far as a donor is concerned, if a charity is operating in the United States, it's not on a prohibited list.

The problem—and we have never, for that reason, we have never targeted donors—the complexity and the difficulty come with charities in the United States who are trying to provide needed legitimate services in these high-risk areas, and the complexities that go along with who they may be working with, and whom they may be dealing with. And it's a very difficult issue.

Because certainly all aspects of these organizations—like Hamas, like Hezbollah—are not publicly identified as designated charities. This is why I think it's important that we do provide guidance on how to—how they should—how they can protect themselves, and provide them information on how these organizations operate.

Mr. ELLISON. Okay. With any time I have remaining, let me ask you this: Could Treasury provide a rebuttable presumption of innocence to donors—individuals, mosques, 501(c)3 organizations—who can show that at the time of the contribution, they checked the combined list and did their due diligence and did not have reason to know that the organization was connected to terrorists, or otherwise fraudulent?

Mr. GLASER. Thank you, Mr. Ellison. Again, we have never targeted donors. So the issue is not really one of providing rebuttal of presumptions with respect to donors. The issue—

Mr. ELLISON. If I may intervene, good citizens don't want to donate to organizations that are prohibited. So, to a certain extent, a donor could be concerned about being targeted, him or herself, or the entity's self.

But, on the other hand, they might just not want to donate to an organization that the government believes is a prohibited organization, whether or not they are targeted themselves. Do you understand my point?

Mr. GLASER. I do understand your point. I do understand that the actions that we have taken have created a chilling effect within the—particularly within the Muslim-American community. I do understand that. And it's a concern. It's something that we are trying to work with.

I don't think establishing a rebuttal—the standard that we are dealing with is whether an entity is owned or controlled by, operating for or on behalf of a terrorist organization. That's the standard that we are working with, and that is the standard that we should continue to work with.

But we need to supplement that with a strong partnership with the charitable community, so that we could get to starting to improve a lot of the very legitimate concerns that you have raised.

Mr. ELLISON. Thank you, Mr. Chairman.

Chairman MOORE OF KANSAS. The gentleman's time has expired. The chairman will next recognize Mr. Klein from Florida for up to 5 minutes.

Mr. KLEIN. Thank you, Mr. Chairman. And thank you for being here today. This is obviously a very important issue around the country. I would like to yield to my colleague, Mr. Lynch, who has some follow-up questions.

Mr. LYNCH. Thank you. I thank the gentleman. Mr. Glaser, I want to push back a little bit on Mr. Adler's question, when he asked you if you thought that your agency had sufficient resources to do its job. I think you're trying to be a team player, and I understand taking that position.

But looking at the responsibilities that you have, let's just start with the greater need for, let's say, FinCEN to interface now, and especially within the Financial Fraud Task Force, to now interface with 3,000 local law enforcement agencies inside the United States, doing all the things that you have already talked about in all these different countries, what the different, MENAFATF task force, all the responsibilities you have there, the tremendous need we have in the Middle East and in north Africa for you to help that situation, the cross-border transfer of funds issue that you're trying to address, I think you are way over—I think the demands on your agency, especially on FinCEN and OFAC are far exceeding—the demands are far exceeding what your capabilities are.

And what troubles me greatly is, when I look at the—next year's budget, you basically have been level-funded—a little bit of an increase—and, I see the agencies that you serve, the FBI, a huge increase on their part, and greater need for you to spread yourself even thinner than what you are doing right now.

I just don't see how—and I appreciate your being a team player and saying, "We're fine," but that's not what I see. I see greater demand on your agency, especially the financial crimes enforcement network, globally, as well as domestically, and I just don't see any way near you filling your obligations, given what they are right now, and the expectations, I think, of Congress for you to meet these further demands. So, I would just like to hear what you have to say about that. I hate to put you on the spot, but you're the only one here.

Mr. GLASER. No, I understand, Representative Lynch. It's a fair question. I don't really know how to respond, though. I appreciate your support. I suppose on some level, more money is better than less money. But we—this is part of a broader conversation, with respect to the Treasury budget, and I am not the right person to respond to that.

We feel that we are meeting our mission with the resources that we have. And we do the best that we can.

Mr. LYNCH. Let me ask you: On the formal banking side, we have the ability to do suspicious transaction reports and CTRs, where—those are the sort of little red flags sometimes that give us

reason for concern and further investigation. Do we have anything on the charity side that remotely compares to that?

Because I think on the next panel, we are going to hear about the great amount of data that we gather through the BSA, the Bank Secrecy Act, and that some feel we aren't really utilizing. So there is going to be pushback on that by my friends from the ACLU, who think that on an individual secrecy and privacy standpoint, it's not worth the intrusion.

Mr. GLASER. I am not familiar with the ACLU's position with respect to the Bank Secrecy Act. But the Bank Secrecy Act doesn't apply to charities. There is not a supervisory framework. The money laundering laws—the Bank Secrecy Act, which is the basic regulatory framework that we have for anti-money laundering—

Mr. LYNCH. I understand. I am asking if there is anything comparable.

Mr. GLASER. No.

Mr. LYNCH. To what we do on the bank side?

Mr. GLASER. No.

Mr. LYNCH. To charities? No? Okay. Thank you. I appreciate your indulgence, Mr. Chairman, and I yield back.

Chairman MOORE OF KANSAS. I thank the gentleman. The chairman will next recognize the gentlelady from Ohio, Ms. Kilroy, for 5 minutes.

Ms. KILROY. Thank you, Mr. Chairman. And I would yield to my colleague from Minnesota, Mr. Ellison.

Mr. ELLISON. And let me thank the gentlelady and the chairman. Just a few more questions.

Has the Obama Administration applied the current rules to close charities and freeze charitable assets that the Bush Administration has been applying? I guess my question is, it looks like the activity has been significantly less, but do you feel that the same principles are still at work? Or how have they changed?

As you know, the Bush Administration closed down about seven charities and prosecuted one.

Mr. GLASER. Yes, there have been a total of 8 charities designated under our basic Executive Order since 9/11. There has not—six of the eight could be identified as Muslim charities. There have been no Muslim charities designated in the United States for almost 3 years. There have been recently two charities designated that are related to the Tamil Tigers that had their assets blocked.

Mr. ELLISON. But I guess my question is, is this a policy change from the Obama Administration, or is it the fact that the activity just isn't going on?

Mr. GLASER. I think we certainly remain committed to shutting down terrorist networks wherever we find them. And there hasn't—there has not been a change in policy in that regard. If there is a terrorist network that we identify in the United States, we are going to take whatever lawful means that we have—

Mr. ELLISON. So the answer is you just haven't discovered that kind of activity.

Mr. GLASER. The answer is that we haven't found that to be appropriate authority in any case—

Mr. ELLISON. Okay.

Mr. GLASER. —of any Muslim—

Mr. ELLISON. Okay, okay, okay, yes. Since we have limited time, you know how it is.

Under current law, the Treasury does have the ability to freeze assets, but does not have the authority to bring a formal charge. Is that right? Do you refer that over to the attorney general for prosecution?

Mr. GLASER. They are two completely different processes.

Mr. ELLISON. Okay.

Mr. GLASER. We don't—the Justice Department would take care of criminal prosecution, but the decision to designate a charity does not imply that there will be a criminal prosecution.

Mr. ELLISON. Do you feel that there are sufficient due process safeguards in place for a charity to come and sort of show that, "Hey, in fact we didn't do this, or, if we did, it was in good faith and we will clean it up?"

Mr. GLASER. Yes. Again, I do think we have sufficient due process. As I tried to explain in my written testimony, there are procedures that we go through on the front end. And then, on the back end, we do have a licensing system so that any designated—not just a charity, any designated entity could come in and say, "We need access to our funds to pay for legal fees or pay for basic expenses," and we regularly permit that to happen.

And then we do have a delisting procedure, and we have delisted 34—34 listed entities have been delisted, none of them charities. So we do have a delisting process that we have demonstrated works. This is a process that has been reviewed by the courts many times, and I think we have a strong—

Mr. ELLISON. Can I ask you, is there a process, an interim process—there is freezing, on the one hand, and there is not taking any action on the other. Is there a process to say, "Look, you have some questionable donations from some questionable sources, or to some questionable sources, and we're not sure that you know that, but we're going to work with you to make sure you get things cleaned up?" Do you have a process like that?

Mr. GLASER. There is not a formal process like that, Mr. Ellison. But I think it's important to remember that the entities that we have designated have not—we have not regarded them to be unwitting victims in all of this. We regard them as being part of these terrorist networks. And we have found it to be our obligation to take the action that we took.

Mr. ELLISON. Yes. I yield back.

Chairman MOORE OF KANSAS. I thank the gentleman.

Ms. KILROY. Mr. Chairman? I think we had maybe half-a-second there left.

So, I just want to understand, if a charity is having difficulty, experienced difficulty with banking or with being able to wire, they're not on your list, but they're still experiencing that difficulty, they're following your best practices, do you have some kind of process or open door that would allow that charity—that would help that charity to understand what the problem was, so that they could make sure that they were in compliance, and be able to fulfill the charitable function, the humanitarian relief, or whatever it was that they were engaged in?

Mr. GLASER. Certainly, we do have a number of outreach processes to try to have precisely this type of discussion with charities, and we are happy to do even more of it.

I am not aware of charities having a problem obtaining—non-designated charities having a problem of obtaining financial services. But if that is a problem, it's something that we would be interested in learning about, and it's something that we would be happy to work with the charitable sector on.

Ms. KILROY. Thank you.

Chairman MOORE OF KANSAS. Thank you, Mr. Glaser, for your service and your testimony today. You are now excused.

And I will invite the second panel of witnesses to please take your seats. Thank you, Mr. Glaser.

Mr. GLASER. Thank you, Mr. Chairman. Thank you.

Chairman MOORE OF KANSAS. I am pleased to introduce our second panel of witnesses. First, we will hear from Ms. Kay Guinane, who is the program manager of the Charity and Security Network.

Next, we will hear from Mr. Michael German, policy counsel at the American Civil Liberties Union.

And finally, we will hear from Mr. Matthew Levitt, director, Stein Program on Counterterrorism and Intelligence at the Washington Institute for Near East Policy.

Without objection, your written statements will be made a part of the record. Ms. Guinane, you are recognized, ma'am, for 5 minutes.

STATEMENT OF KAY GUINANE, PROGRAM MANAGER, CHARITY AND SECURITY NETWORK

Ms. GUINANE. Thank you. I would like to begin by expressing my thanks to you, Chairman Moore, Ranking Member Biggert, and the members of the subcommittee, for holding this very important hearing, and inviting me to testify. This is the first opportunity U.S. charities have had to tell their story about the impact of national security laws since 9/11, and we very much appreciate that.

It's a critical first step, then, in calling attention to a serious and overlooked problem: the barriers that current national security laws create for legitimate U.S. charitable organizations. The Charity and Security Network, where I am program manager, is a broad cross-section of U.S. organizations that are working to provide solutions to the problems that are being addressed today.

First, I want to strongly state and emphasize that the U.S. charitable sector condemns violence and terrorism. We share the Department of Treasury's goal of stopping the flow of financing to terrorist organizations, whether directly or indirectly. But, unlike many foreign organizations, the U.S. charitable sector is highly regulated, primarily by the IRS. In addition, we are subject to ethical standards that demand non-discrimination in development and aid programs.

These standards were described in a May 12th letter to President Obama from a group of 30 charities. These groups said, "Since the Reagan Administration's declaration in 1984 that 'a hungry child knows no politics,' U.S. policy has been to provide humanitarian assistance on the basis of need, without regard to political affiliation, creed, race, or the international status of the country or territory

to which a person belongs. It is the Golden Rule of the American nonprofit sector, and it provides humanitarian assistance all over the world.”

We urge you to assess the testimony today by this standard, with the view that charity and security are mutually reinforcing, not competing goals. We feel our work directly confronts terrorism.

Despite some statements from the Department of the Treasury, charities are not a major source of terrorist financing. U.S.-based charities comprise only 1.68 percent of designated entities on the specially designated global terrorist list. And the 9/11 staff monograph made it clear that they were not a source of domestic support for the attacks of 9/11. Instead, the work of charitable organizations confronts the conditions that may be conducive to terrorism. This has been recognized by Ambassador Benjamin, Coordinator of Counterterrorism at the Department of State, who said, “There is probably no success in this area that can happen without civil society.”

Since 9/11, the U.S. charitable sector has proactively taken steps to enhance transparency and accountability to protect the charitable sector from bad actors. These efforts include guides and programs such as the Principles of International Philanthropy, or a handbook, “Counterterrorism Measures: What U.S. Nonprofits and Grant Makers Need to Know.” In addition, Muslim Advocates operates a charities accreditation program.

But the impact of U.S. Treasury enforcement on legitimate charitable organization has been largely negative. First, Treasury’s Antiterrorist Financing Guidelines demonstrated a lack of understanding of how charities operate, and the charitable sector has uniformly called for their withdrawal, to no avail.

Perhaps the biggest problem with the Guidelines is that complete compliance with every suggested practice provides no legal protection to a charity, not even a presumption of good faith. A charity could still be shut down and have all its assets frozen and seized, all without notice, opportunity to see the evidence against it, or present evidence on its own behalf. There is no independent review, and upon appeal to Federal court, no opportunity to present evidence.

The situation with frozen funds is also problematic. There is no timeline or process for the long-term disposition of these funds. Treasury can grant licenses that would allow funds to go to legitimate charities for charitable purposes, but they have refused every request to do so.

Using UNICEF data, I calculated that, if we know at least \$7 million in U.S. charitable funds have been frozen, that could provide 11,480,000 children with basic health supplies, or 12,180,000 children could be vaccinated against polio. But the lack of transparency and these Draconian sanctions have discouraged many U.S. charities from pursuing international humanitarian work. And charities that do so complain of long delays with licensing applications, and have lost funding as a result.

In the end, what we need from Treasury is transparency, accountability, proportionality, and humanity in their approach to enforcement in the charitable sector.

Thank you for the opportunity to bring our story to you today.

[The prepared statement of Ms. Guinane can be found on page 65 of the appendix.]

Chairman MOORE OF KANSAS. I thank the lady for her testimony. Mr. German, you are recognized, sir, for 5 minutes.

**STATEMENT OF MICHAEL GERMAN, POLICY COUNSEL,
AMERICAN CIVIL LIBERTIES UNION**

Mr. GERMAN. Chairman Moore, Ranking Member Biggert, and members of the subcommittee, thank you for inviting me to testify on behalf of the American Civil Liberties Union about the need for greater transparency and due process in the Treasury Department's enforcement of antiterrorism financing laws, particularly as it affects charitable organizations working to foster peace, promote human rights, and alleviate human suffering around the world. Congress serves an essential constitutional role in overseeing Executive Branch activities, and we commend you for scheduling this important hearing.

The ACLU has long been concerned about the over-broad authorities conveyed through the International Emergency Economic Procedures Act and Executive Order 13224, which give the Treasury Department practically unfettered authority to declare individuals or organizations specially designated global terrorists using secret evidence, without independent oversight, probable cause, or effective due process, procedures to protect against error and abuse.

The serious consequences of such designations include the seizure and freezing of all financial and tangible assets without any notice, hearing, or judicial review. Where entities have tried to challenge their designations, courts have generally applied a highly deferential standard of review, which requires finding the Agency acted in an arbitrary and capricious manner in order to overturn a designation.

If a court does review Treasury's evidence, it may do so in camera and ex parte, which denies the designated entity the opportunity to challenge the evidence against it. Treasury can even freeze assets pending an investigation.

Moreover, as mentioned in my written testimony and documented in even greater detail in the ACLU report, "Blocking Faith, Freezing Charity," the Treasury Department's unequalled enforcement of these over-broad laws has a disproportionate impact on Muslim charities, implicating First Amendment rights in addition to the Fourth and Fifth Amendment due process concerns.

In Cairo, Egypt, last year, President Barack Obama acknowledged that, "in the United States, rules on charitable giving have made it harder for Muslims to fulfill their religious obligation." Such discriminatory practices alienate American Muslims, undermine U.S. standing in the Muslim world, and provide fuel for extremists' inflammatory allegations that the United States is anti-Muslim.

But it isn't just Muslim charities that are unconstitutionally chilled from engaging in legitimate religious, humanitarian, and advocacy activities. The Carter Center, Christian Peacemaker Teams, Grass Roots International, Human Rights Watch, the International Crisis Group, the Institute for Conflict Analysis and Reso-

lution at George Mason University, the Kroc Institute for International Peace Studies at Notre Dame University, Operation USA, and the Peace Appeal Foundation joined in an amicus brief filed by the ACLU in support of a challenge to the criminal statute prohibiting material support for terrorism.

They argued that a result of the breadth and vagueness of the statute's terms—it was unclear whether legitimate activities such as peacemaking, conflict resolution, human rights advocacy, and the provision of aid to needy civilians could expose them to the risk of criminal penalties if they involved a group that the U.S. Government has designated or may in the future designate as foreign terrorist organizations.

Such a chilling effect on legitimate aid is counterproductive to U.S. counterterrorism goals. The generosity of the American people toward those in need around the world is an asset to U.S. counterterrorism efforts. Our government should not squander it by unfairly castigating the charitable sector as a primary source of terrorist financing, particularly when the available evidence belies this notion, as the government has actually designated and successfully prosecuted relatively few U.S. charities for terrorism-related activities.

Indeed, a 2004 report on terrorist financing by the 9/11 Commission staff found that the evidentiary basis for many of Treasury's designation decisions were "quite weak" in the post 9/11 period, which led to questionable designations that made other nations "unwilling to freeze assets, or otherwise act merely on the basis of U.S. action."

Similarly, a 2005 Government Accountability Office study suggested that the shroud of secrecy under which the Treasury Department exercises its authorities raises questions about the effectiveness of these important programs. GAO called for greater oversight of these authorities, but found that in 2009 follow-up, the Treasury's Terrorism and Financial Intelligence Office continues to face deficiencies in interagency cooperation and strategic workforce planning, and has yet to develop appropriate performance measures to effectively assess its core programs.

Congress must address these deficiencies that risk both our liberties and our security, by bringing needed transparency to the Treasury Department's procedures through vigorous public oversight and the establishment of effective due process mechanisms that give entities impacted by these broad authorities a meaningful opportunity to defend themselves before a neutral arbiter.

Thank you, and I look forward to your questions.

[The prepared statement of Mr. German can be found on page 39 of the appendix.]

Chairman MOORE OF KANSAS. Thank you, Mr. German.

Mr. Levitt, sir, you are recognized for 5 minutes.

STATEMENT OF MATTHEW LEVITT, DIRECTOR, STEIN PROGRAM ON COUNTERTERRORISM AND INTELLIGENCE, THE WASHINGTON INSTITUTE FOR NEAR EAST POLICY

Mr. LEVITT. Thank you. Chairman Moore, Ranking Member Biggert, and distinguished members of the subcommittee, I thank

you for the opportunity to appear before you today at this important hearing on this critical topic.

Nonprofit organizations are especially susceptible to abuse by terrorists and their supporters for whom charitable or humanitarian organizations are particularly attractive fronts. The Financial Action Task Force, the multilateral body that aims to set global standards for anti-money laundering and counterterror financing has found that, "Terror networks often use compromised or complicit charities and businesses to support their objectives."

In fact, FATF warned that, "The misuse of nonprofit organizations for the financing of terrorism is coming to be recognized as a crucial weak point in the global struggle to stop such funding at its source."

According to the Justice Department, intelligence indicates that terrorists continue to use charities as sources of both financial and logistical support. British officials concur. According to a joint UK Treasury/Home Office report, a significant proportion of terror finance investigations in the UK in the year 2006 included analysis of links to charities. The report found that, "The risk of exploitation of charities is a significant aspect of the terrorist finance threat."

Indeed, terrorist groups have long exploited charities for a variety of purposes, as we document in the Washington Institute study of "the Money Trail" in some detail. Illicit charities offer available legitimacy for terrorist fundraising, attracting unwitting donors who are unaware that the monies they donate for humanitarian purposes fund terror.

Charities are vulnerable to abuse as money laundering mechanisms, and can be abused to provide terrorist operatives with day jobs, salaries, meeting places, and more. Through charities, transnational terrorist groups have been able to move personnel, funds, and material to and from high-risk areas under cover of humanitarian charity work.

Charities tend to operate in zones of conflict, and traditionally involve the flow of money in only one direction, both of which are characteristics that would arouse money laundering suspicions in other organizations.

Most charities are completely law abiding, praiseworthy organizations. But among the minority of charities engaged in supporting terrorism, some are founded with the express purpose of financing terror, while others are infiltrated by terrorist operatives and supporters, and co-opted from within.

Treasury designations of an entire charity, as have been the case in only a few instances here in the United States, focus only on the former. Never has the government targeted unwitting donors. Recognizing that analysis of this particular preferred means of terror financing demands a discerning and discriminating level of analysis, Ambassador Francis Taylor, then the State Department's coordinator for counterterrorism, noted in 2002 that, "Any money can be diverted if you don't pay attention to it, and I believe that terrorist organizations, just like criminal enterprises, can bore into any legitimate enterprise to try and divert money for illicit purposes."

Consider the example referenced earlier of Abd Al Hamid Al-Mujil, executive director of the eastern province of the Inter-

national Islamic Relief Organization, designated by Treasury in 2006. According to the public statement announcing his designation, and to declassified intelligence included therein, Mujil was described by fellow jihadists as the “Million Dollar Man” for his support of terrorist groups, including al-Qaeda, through his charity.

One reason the charitable sector remains vulnerable to terrorist financing, according to the Financial Action Task Force, is that charities are subjected to lesser regulatory requirements than other entities, such as financial institutions or private companies. The United States has been largely alone in cracking down on the abuse of charities and NGOs by militant groups. Many other countries have been reluctant to take any steps to tackle this problem, often out of concern that they will appear to be targeting humanitarian efforts.

Despite some criticism, the U.S. Government has been consistent in its effort to protect the donor public and stem the flow of funds to terrorists by cracking down on the abuse of the charitable sector by terrorist organizations. The Treasury Department has designated around 60 charities with ties to terrorist groups, a few with branches in the United States. The United States has also prosecuted charities and their leaders, such as in the case of the Holy Land Foundation for Relief and Development, which was found guilty on all counts in November 2008.

In none of these cases was U.S. Government action capricious or based on sparse, dated, or unreliable information. In none of these cases was the charity suspected of engaging in one or two bad transactions. The designation process, in particular—I know, from firsthand experience—is appropriately robust, vigorous, and errs on the side of caution. Designated entities can and do appeal their designations, and the Treasury Department has a record of lifting designations when warranted.

But it should be clear that charities and international aid organizations come to this problem set from a noble and well-intentioned perspective, focused on the need to highlight opportunities to facilitate quick, efficient, and timely aid. Thankfully, promoting opportunities for charitable giving, and reducing the risk that those opportunities are abused for illicit purposes are in no way mutually exclusive goals.

The problem is not enforcement of U.S. laws banning material support to terrorist organizations, but rather the unintended impact this has had on charitable giving. Greater due diligence on the part of the nonprofit sector, combined with government outreach, would go a long way toward resolving this problem. Thank you.

[The prepared statement of Mr. Levitt can be found on page 93 of the appendix.]

Chairman MOORE OF KANSAS. I thank the gentleman for his testimony, and all of the witnesses for their testimony. I recognize myself for up to 5 minutes for questions.

Mr. German, since the ACLU issued its report last summer, are there any new observations or ongoing concerns you may have with respect to blocking terrorist financing and its impact on law-abiding charities?

Mr. GERMAN. As I—

Chairman MOORE OF KANSAS. Let me just ask this, too. How would you evaluate Treasury's performance on these issues?

Mr. GERMAN. As I detail in my written statement, we have had a decision in the Kind Hearts case. So, that was very welcome.

And, obviously, the court turned it to Congress to try to develop a process by which the Fourth Amendment rights of charities whose property is seized, either pending investigation or through designation, have an opportunity to defend themselves—understand the charges, have necessary notice, and defend themselves. So we are looking forward to working with this committee to help address responding to the court's decision.

In regard to the Treasury Department's response to President Obama's acknowledgment of the problem and the impact on Muslim charities, we have not seen a significant effort to address that issue. And certainly, the community still has concerns that are impacting its ability to pay Zakat.

Chairman MOORE OF KANSAS. Thank you, sir. Ms. Guinane, are the Treasury's voluntary best practices for U.S.-based charities document useful for charities who are trying to fully abide by U.S. law? Do you have any suggestions in terms of how they may be improved, or how Treasury can do a better job in this area?

Ms. GUINANE. I'm sorry, I was unable to hear the second part of your question.

Chairman MOORE OF KANSAS. I said with regard to the Treasury's voluntary best practices, a document useful for charities, is it useful for those charities who are trying to abide by law?

And do you have any suggestions, in terms of how they may be improved or how Treasury can do a better job in this area?

Ms. GUINANE. Yes, we do. In 2005, the Treasury Guidelines Working Group, which was a broadly representative collection of charitable organizations and experts, developed the Principles of International Charity, and submitted that to Treasury as a suggested replacement for the Guidelines. Treasury adopted some of those suggestions, but not all. And in 2006, when it released the current version of its guidelines, it retained a lot of the problematic provisions.

Since then, the Charity and Security Network has coordinated an effort to develop specific procedures that we think make sense for charitable due diligence and for due process, and we would be happy to share those with the committee and with Treasury, as well.

Chairman MOORE OF KANSAS. Thank you. Mr. Levitt or Mr. German, do you have any comments?

Mr. GERMAN. I would just like to add a little pushback on the issue that—or the argument that donors aren't impacted, and donors aren't targeted. We document in the report that there is a substantial effort by the FBI to contact donors and ask them about their charitable donations, which creates this chilling effect that puts fear into them, where even donating to an organization that may not be designated today would not protect them from prosecution later.

Chairman MOORE OF KANSAS. Thank you. Mr. Levitt?

Mr. LEVITT. In which case the ACLU should have an issue with the way the FBI is conducting its investigations into terror financ-

ing. If that happens, that is in no way a function of the designation process.

If I may add one last thing, if I have the number right that you cited—it was only 1.68 percent of designated entities that are U.S.-based charities means there is an inherent flaw in measuring a lot of this by how many designations are done. Or, for that matter, how much money is seized.

I think it's really important to understand designation is a very powerful tool, in part because it should not be done capriciously, and because you err on the side of caution. There are many, many cases, domestically and abroad, where charities hit the threshold for designation, but in this robust interagency review are rejected for designation. And other tools—law enforcement, or regulation, or outreach to the charity—lots of other tools are used.

That doesn't mean that only 1.68 percent of charities in the United States have ever been of concern. It might be that the whole charity wasn't bad, there was just one person. You don't want to shut down that charity. We're all in agreement that—on this panel—you want to facilitate charity to the greatest extent possible, period.

It's a very flawed metric to measure this just by how many charities have been designated, in part because Treasury is so careful about only designating the worst cases where they are absolutely knowingly engaged in this activity. Only those are designated.

Chairman MOORE OF KANSAS. Thank you. My time has expired. The chairman next recognizes Mrs. Biggert for 5 minutes for questions.

Mrs. BIGGERT. Thank you, Mr. Chairman, Mr. Levitt. How can Treasury address the problem of a designated entity shutting down, only to open up some time later, perhaps under a new name?

Mr. LEVITT. As you heard earlier, there is a really good interagency process on this, not only leading up to the designation or to whatever other action is decided upon for a charity or an entity of any kind that is deemed to be knowingly engaged in supporting terror financing, but also in terms of the follow-up, to see what the entity is doing.

So, sometimes you will have charities that open up under a new name, and they are engaging in the same terror finance activity. And you then need to decide if you're going to designate or take some other law enforcement action against those.

In other cases, you might have people who are involved with the original designated charity who are not knowingly involved in illegal activity. They were in the minority and they open up some legitimate charity, and that's to be applauded. It really has to be a careful investigation.

Mrs. BIGGERT. Should there be some database of individuals working for organizations, similar to the relatively recent database on mortgage brokers?

In other words, if there was a list of people or individuals who were involved in this, and their name pops up again in another organization, is that part of the designation, or is that—would that be something new, or would that be helpful?

Mr. LEVITT. That would be new, and I don't know that it would be helpful. You really do need to conduct a very thorough investiga-

tion. I wouldn't want to create a list like that, which would basically tar-and-feather, name-and-shame them, unless you really knew that those individuals, particular individuals, were involved.

There were people involved in the Holy Land Foundation that were not indicted and were not designated because they were some accountant or some secretary and they weren't aware of the stuff that was going on behind closed doors, or all the activities. So you want to be very careful about that.

Mrs. BIGGERT. Okay. And then you know the difference of charities established for the express purpose of financing terror and those charities that were infiltrated by terrorist operatives. Should Treasury's approach differ when policing these types—different types of abuses? And should the enforcement outcome differ?

Mr. LEVITT. It has to be done on a case-by-case basis. Often, people describe the U.S. designation system as a sledgehammer approach, just shutting down charities. Compare it, for example, to the UK charity commission, which can be described as a scalpel approach, where they tend to try and carve out the bad entity from the good, or if there is a little good entity, from the larger bad.

My feeling is this is not an either/or. This has to be a case-by-case study. Because in the United States, the Treasury was so careful only to designate the most egregious offenders, they have not designated a domestic case where there was a good part to be cut out of the otherwise bad charity—short of, for example, in the case I just cited of some low-level employee.

When you have such an example, I think it would be useful to consider. If the charity itself is good, and it's being abused by one or two bad actors, and it is possible to remove the tumor and keep the rest of the patient alive, that would be a very useful thing to do.

To date, the Treasury has only tried this approach—designating parts of an organization, as opposed to all of it—with charities abroad. And in each of these, al-Haramain, Revival of Islamic Heritage Society, it has failed, and ultimately had to designate all of it. But that's because, I think, in those charities abroad, the United States doesn't have regulatory and law enforcement oversight capability.

If we were to find such a target in this country, I think that would be a useful approach. But it would have to be case-by-case, based on the nature of the precise evidence and intelligence available.

Mrs. BIGGERT. Could you elaborate on the global partner vetting system, PVS, and how that would work in practice?

Mr. LEVITT. The partner vetting system, which was applied to entities largely working with USAID in the Palestinian territories, is based on the finding that, unknowingly, USAID and others were partnering with entities—in the West Bank and Gaza, in particular—that were tied to Hamas or other terrorist groups. And it comes down to how extensive the due diligence is that's being done by these charities, not only in terms of who they're partnering with here, but really who they are partnering with abroad.

You could be a legitimate charity here, trying to do the right thing, let alone have legitimate donors trying to do the right thing. If you're not careful about who you partner with abroad, you're

handing money on a silver platter to some very bad actors. The partner vetting system, in a nutshell, was set in place to require charities to do some vetting of the local partners they were working with.

Let's be clear. This is not easy to do. It is a burden, and it's costly. I think that the charitable, nonprofit sector has a responsibility for due diligence, and that due diligence goes way beyond looking at the various U.S. Government lists, way beyond that. The government also has a responsibility, I think, to try and do more, through transparency and working with the public sector, to enable that, because vetting your partners is hard.

But the premise, for example, of coming up with a best practices list which, if you do that and nothing else, will protect you from any prosecution, is never going to happen, because we all have responsibilities in our daily lives, our personal lives, our business lives, our charitable lives, to make sure that we are doing as much as we can to partner with the right people and not the wrong people. If you make a mistake, government is not going to target you.

Mrs. BIGGERT. Thank you. I yield back.

Chairman MOORE OF KANSAS. Thank you. The chairman will next recognize for up to 5 minutes, Mr. Lynch from Massachusetts.

Mr. LYNCH. Thank you, Mr. Chairman. Mr. Levitt, you had an opportunity to look at Treasury's response and how they are trying to interface with different law enforcement organizations, and trying to really deal with the banking side of this, as well as the charity side of this.

Do you think we are asking too much of Treasury right now, given the resources that we're allocating to them for their job?

Mr. LEVITT. As a former colleague of Danny Glaser's, I am wary of placing him on the hot seat. But enjoying the prospect of not being the former Treasury DAS, and being able to speak my mind, I actually do agree with him. For the moment, Treasury seems to have enough resources, and there may be a question of—

Mr. LYNCH. Even the financial crimes network?

Mr. LEVITT. FinCEN is its own entity and agency within TFI. And I would strongly recommend—and I assume the subcommittee has—reaching out directly to the director, Jim Freis, and others on this issue. I don't claim to be an expert on the internal workings of FinCEN.

My sense when I was there—I left in early 2007—and my sense observing as an academic from the outside is that Treasury is doing a remarkable job, and that Treasury's mission hasn't changed since the Bush Administration or during the Obama Administration, because this is a simple, nonpartisan, bipartisan law enforcement issue, where there is complete consensus. This is not a political decision.

Mr. LYNCH. The problem, though, is that we are now asking them to operate on a more granular level in dealing with 3,000 local law enforcement agencies.

We have the situation, such as in Boston, where you have either a hundi or a hawala provides resources, modest resources, to a group that is connected to the Times Square bombing attempt. And it just seems to me that we're asking a tremendous amount from

some very brave individuals who are stretched very thin in meeting those obligations.

And I am trying to, on my own part, as one Member, trying to get more resources to that organization, because I feel that everyone will agree after we have an intelligence failure that we should have increased the resources of that agency. But it's tough to convince people in the meantime.

Let me ask, I know that there is a pretty solid matrix that Treasury has laid out for charities to operate in a responsible manner, which is to try to identify their customers, to make sure that the funding is somehow funneled through a legitimate banking institution so we have that screen, and also to monitor the activity of that charity to basically see what they are doing.

Those seem like rather reasonable expectations that we should have of our charities. And I am just wondering if I am missing something?

Mr. LEVITT. I don't think you are, sir. I think they are reasonable, but they are also baseline. They are meant to be the baseline for discussion and for interaction with the charitable sector.

There is a lot the charitable sector has done in this regard to improve that is laudable. Some of it you have heard about it at this panel. Danny mentioned charity in the American Palestinian context that has been done, I think, trend-setting work, trying to bridge the divide between the need—and it is a national security need, I would argue—for humanitarian support, and it's important well beyond its national security implications on its own right.

They are not supposed to be an answer to everything. They are supposed to be giving direction. And so they're a baseline.

Mr. LYNCH. Mr. German and Ms. Guinane, there seems to be a—on the one hand, I have been into Gaza a few times, and I have to admit I am impressed with the Palestinian Monetary Authority and how they are really trying to work within BSA and trying to conform with those anti-money laundering statutes.

However, you have to acknowledge, not too long ago, we caught Mr. Hania coming in through the Rafah Gate with \$30 million in cash in some suitcases. So we have success in the formal sense. But in the informal sense we are concerned about money getting to Hamas and to Hezbollah.

And I am just curious what the overlay that I just talked about with Mr. Levitt on the risk matrices, how do you find that? Reasonable? Unreasonable? Or—how does it create difficulties for you to operate, or charities to operate?

Mr. GERMAN. The problem is multi-faceted. Part of the problem is that following all the rules that Treasury puts out doesn't protect a charity. So it's impossible to know whether they are actually complying with the law. It's very burdensome, and there is not much evidence that it is actually effective in preventing terrorism. And that's really the problem with the lack of transparency.

Our constitutional system is built so that we don't have to take the Treasury Department's word for whether their actions are effective. Part of our system is what you're doing today, which is wonderful, is digging into these questions to find out both whether it's effective and whether it's complying with the law and protecting people's individual rights.

So, that transparency is something that actually will force more efficiency and more effectiveness, and make them actually prove that they have the right people caught in this—and also encourage the public to understand the problem, so that they can better curb their activities where they see other people getting in trouble.

But where this is all happening behind closed doors, it's impossible for the public to know why an agency was designated, or why it was not taken off the list. When there is that secrecy, it's impossible to know how to react.

Chairman MOORE OF KANSAS. The gentleman's time has expired. Mr. Royce, you are recognized, sir, for 5 minutes.

Mr. ROYCE. Thank you, Mr. Chairman. I was going to ask Mr. Levitt a question.

You mentioned that only the most egregious cases have come forward—no cases in the last 3 years. But I guess there is a handful of cases here that have been brought up today and I wanted to speak to those three, the three that were mentioned.

There are perhaps 1.5 million charities, I guess, and this handful of charities, since we're speaking about their attempts to get delisted, we should probably reference them.

The ACLU, in its report, defends the Holy Land Foundation, even though a jury trial convicted the defendants of every one of the 108 charges.

And then we go to the testimony of Ms. Guinane. She mentions the Benevolence International Foundation and the Islamic African Relief Agency. Now, in terms of the Benevolent International Foundation, the CEO was indicted by the Justice Department for operating that organization as a racketeering enterprise and providing material support to terrorist organizations, including al-Qaeda.

The Islamic African Relief Agency, that was designated for providing direct financial support for Osama bin Laden and al-Qaeda's precursor, and also for commingling funds, engaging in a joint program with an institute controlled by Osama bin Laden, and was responsible for moving funds to the Palestinian territories for use in terrorist activities, notably serving as a conduit to Hamas. By the way, the assistance to Osama bin Laden was providing assistance to Taliban fighters.

And then, lastly, it's headquartered in Khartoum, Sudan. So the point was made that they have made repeated requests over a 2-year period for a release of funds to assist in Pakistan. I am just back from Pakistan. And up in northwest Pakistan, there are a lot of activities up there by dibhindi schools. And right now, they are supporting the Taliban, and—the dibhindi schools—are graduating young students who are ending up in the Taliban who are carrying out activities against the Pakistani government. And also over the border in Afghanistan, I was also up in Kabul. Same problem. Graduates out of these schools are going out and, with the support of the dibhindi movement, are carrying out attacks in Afghanistan.

Perhaps, given the past history of this organization, the reason the government doesn't want to release the funds when they say they're going to send those funds to spend them in Pakistan, is because these funds might end up being spent the way other funds are being spent right now in Pakistan, in order to fuel the war to try to overturn the state and turn it into an Islamic Republic.

I would just like Mr. Levitt's opinion on that.

Mr. LEVITT. When the United States designates an entity, it produces a fact sheet for use in the press release based on at least some declassified intelligence. This is important so we can have this conversation with the public sector, with the charitable sector, so that people can't sit before Congress and say, "Nobody knows why these charities are designated." They may not have the whole picture, but they get at least a certain amount of the evidence put before them, even if it's only a little bit.

And it can only be a little bit, because much of it has to come from intelligence, because you're dealing with entities—in those very few examples where charities are engaged as terrorist fronts—and let's stress that most are not—where they're engaged in covert activity, and they are doing one thing publicly, and a very, very different thing, as you laid out, privately.

When a charity has been so designated, its trust is gone. And if there is to be some type of program whereby the funds that it collected from donors who wanted to do the right thing, is to be dispersed to facilitate aid, it seems to me that decision, should there be a mechanism to facilitate it, should be made by someone other than an individual tied to that original charity.

But it doesn't seem to me like that's something that could not happen. I, not in or out of government, have been party to this discussion as to under what circumstances those funds, frozen from an illicit charity involved in terror financing, can ultimately be dispersed for truly humanitarian purposes. But it doesn't strike me, if it can be done in a trustworthy way, as a bad idea. In fact, it might be sticking a finger in the eye of the terrorists. But it would have to be done appropriately.

Mr. ROYCE. It also strikes me that this doesn't exactly limit people's freedom of action, given the number of charities that exist in the world, and given this very small list, it doesn't seem to me that would preclude people from doing charitable work.

Mr. LEVITT. I don't think so. As someone who gives to charity, it has never stopped me. I think that there is a need, there is a gap that can be filled by people who are expert in nonprofit operations to do things like this charity that I discussed in my written testimony has done in the context of facilitating charitable giving from Americans, including Muslim-Americans, to needy Palestinians, which is a laudable, praiseworthy, wonderful thing, so long as it's done in such a way that the donors and the charity and the government here and the government in the Palestinian Authority, for that matter, have a level of comfort that it's not going to illicit actors.

Mr. ROYCE. Thank you.

Chairman MOORE OF KANSAS. The gentleman's time has expired. The chairman next recognizes Mr. Ellison for 5 minutes. Sir?

Mr. ELLISON. Thank you, Mr. Chairman. I think it's fair to point out that the Holy Land Foundation defendants were convicted. I think it's also fair to point out that their appeal is not completed, and that the first time they were tried, I think that on nearly all counts, there was a hung jury. And I think it's also fair to say that there were some novel uses of evidence in the case that resulted in a conviction. So, I don't know what's going to happen, and I'm

not here to retry the case, but I just think those facts are important, as well.

Let me ask the panel, what happens after assets are frozen? Once they are frozen, essentially, what happens next?

Ms. GUINANE. When the charitable assets are frozen, their banks receive a notice that the assets are blocked. The charity receives such a notice. Government agents come and seize all their files and equipment, and any goods they have, such as—I understand there is a warehouse in Missouri full of blankets that belong to one of the U.S. charities that was shut down.

After that, there is very little public information about what happens to that money. Right now, as far as we know, it's just sitting there with no plan for its disposition.

What could happen, and what we feel should happen is that these funds belong to the charitable mission of the organization. And even if there are bad actors in the organization, the funds should be spent by an able and legitimate charity to further that charitable mission. If it's to assist children, if it's to promote health, whatever that is, that's what should happen to those funds. But right now, there is no provision for that to happen. And Treasury has declined every request, as noted from charities, to transfer those funds.

Treasury has plenty of authority under their licensing regulations to oversee and regulate any release of frozen funds. They don't automatically go back to the designated organization or to the same people to spend—

Mr. ELLISON. But at least at this time, there is no clear procedure as to what happens after—with the frozen assets, how they're—are they sent to other organizations that are legitimately serving the mission, or—

Ms. GUINANE. There is no provision. And I think that's because this is occurring under IEEPA, which is an economic embargo law that was originally meant as a Trading-With-the-Enemy Act is where—

Mr. ELLISON. So you think at least Congress or at least the Agency needs to promulgate either statutes or rules to deal with the disposition of these assets?

Ms. GUINANE. There are none, and that's something we need.

Mr. ELLISON. Also, is there any appeal process, once assets are frozen? And, if there is, could you describe it?

Mr. GERMAN. In my written testimony, I go through the case of Kind Hearts, where they were actually frozen pending investigation. They weren't actually designated. In February of 2006, their assets were seized and frozen, pending investigation. And more than a year later, in May of 2007, they were given a notice that they were provisionally designated. When they tried to find out why this had happened, the Treasury Department was unresponsive. And their attempts to defend themselves against unknown charges were—Treasury was also unresponsive, so—

Mr. ELLISON. So they weren't given a hearing date, they weren't given a—

Mr. GERMAN. No, there is no hearing, no notice, no hearing, no due process at all.

Mr. ELLISON. Do you have any reason to believe that Treasury has changed its approach on this issue under the Obama Administration?

Mr. LEVITT. No, and that's because this is a nonpartisan, bipartisan, law enforcement issue. It's not a policy issue.

Mr. ELLISON. Thank you very much, sir. Do you, either one of the two of you, have any reason to believe that there has been any change?

Ms. GUINANE. I see more openness to dialogue under the Obama Administration, and an acknowledgment that there is a problem, which is a big step forward.

However, there hasn't been a change in the actual procedures. There is still no proportionality, so that a small organization that makes a mistake can correct its problem. We still just have the freeze-and-seize kind of instant death sanction, and that's pretty much it.

Mr. ELLISON. And do you have any accurate data on what portion of the terrorist financing comes from American charities worldwide?

Ms. GUINANE. There is not enough transparency in the process for me to be able to answer that question. I just know from news reports and reports from attorneys for some of the designated organizations that there is at least \$7 million in U.S. charitable funds that are frozen.

Mr. ELLISON. Thank you.

Mr. LEVITT. But, of course, the amount of frozen funds is an immaterial number, given the fact that designation is only one tool.

And so, there may be many other entities out there, because the designation—

Mr. ELLISON. I don't have a question before this witness, sir, Mr. Chairman.

Chairman MOORE OF KANSAS. The gentleman's time has expired, and we have completed the hearing. Again, thanks to our witnesses for your testimony today.

Today's hearing gave us another opportunity to review efforts to stop money laundering and terrorist financing in an aggressive manner that makes the most sense. We will continue reviewing these issues in the weeks and months ahead.

I ask unanimous consent that the following item be entered into the record: ACLU's June 2009 report entitled, "Blocking Faith, Freezing Charity."

The Chair notes that some members may have additional questions for our witnesses, which they may submit in writing. Without objection, the hearing record will remain open for 30 days for members to submit written questions to these witnesses, and to place their responses in the record.

The hearing is adjourned, and again, thanks to our witnesses and our members.

[Whereupon, at 11:54 a.m., the hearing was adjourned.]

A P P E N D I X

May 26, 2010

HOUSE FINANCIAL SERVICES OVERSIGHT & INVESTIGATIONS SUBCOMMITTEE

"Anti-Money Laundering: Blocking Terrorist Financing and its Impact on Lawful Charities"

10 am on Wednesday, May 26, 2010 | 2128 Rayburn

Chairman Dennis Moore's Opening Statement

Today's hearing is the second in a series of hearings we are having focusing on oversight of efforts to combat money laundering and terrorist financing.

Last month, our subcommittee held a hearing reviewing several FinCEN oversight reports, examining how FinCEN could better interact with law enforcement agencies as well as improving the data quality collected from suspicious activity reports (SARs).

While the May 1st Times Square bomb attempt is not the subject of today's hearing and is currently being investigated by federal authorities, the incident is a vivid reminder that despite nearly nine years passing since the tragic September 11th, 2001 terrorist attacks, there continue to be those who wish to do us harm. Our government must use every tool available to shut those terrorist groups down, including cutting off the financing that supports them.

Today, we are examining the Treasury Department's efforts to block all financing that goes to terrorist organizations that seek to do us harm, and how these efforts impact lawful, law-abiding charities who only want to use contributions for legitimate and good purposes. If even one percent of charity funds are going to a terrorist organization, our government is required by law to shut that source of funding down, as we should. But there are many good organizations who want to fully abide by the law and ensure that 100 percent of their money is used only for good efforts. I look forward to learning what steps Treasury has taken with respect to those lawful charities and encouraging charity organizations to fully abide by the law.

I am pleased the Treasury Department was able to provide Deputy Assistant Secretary Glaser to testify on these important issues, and I look forward to hearing the views of our second panel of witnesses as well.



Written Statement of
Michael German, Policy Counsel

American Civil Liberties Union
Washington Legislative Office

On

“Anti-Money Laundering: Blocking Terrorist Financing and its
Impact on Lawful Charities”

Before the

Subcommittee on Oversight and Investigations

House Committee on Financial Services

May 26, 2010



WASHINGTON LEGISLATIVE OFFICE
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Chairman Moore, Ranking Member Biggert, and Members of the Subcommittee, thank you for inviting me to testify on behalf of the American Civil Liberties Union, its over half a million members and fifty-three affiliates nationwide, about the need for greater transparency and due process in the Treasury Department's enforcement of anti-terrorism financing laws, particularly as it affects charitable organizations working to foster peace, promote human rights and alleviate human suffering around the world. The ACLU is one of the nation's oldest and largest organizations committed to defending the Constitution and Bill of Rights in the courts and before the executive and legislative branches of government. We appreciate the opportunity to express our concerns about an unconstitutionally overbroad statutory and regulatory framework which gives the Treasury Department practically unfettered authority to shutter charities using secret evidence, without independent oversight, probable cause, or effective due process protections to protect against error and abuse.

I. Introduction

We all acknowledge the government's legitimate and compelling interest in protecting the nation from terrorism and in stemming material support that furthers the unlawful, violent acts of terrorist groups. But the Constitution requires precision in pursuing this mission to ensure the government properly distinguishes between confederates of terrorist groups who seek to facilitate their unlawful aims, and individuals and organizations whose legitimate First Amendment expression and advocacy brings them into association with such groups. Unfortunately, at a time when the humanitarian aid and development programs and conflict resolution and human rights training offered by charities and foundations are needed the most, the Treasury Department's capricious, arbitrary and discriminatory enforcement of overbroad U.S. anti-terrorism financing laws have made it far more difficult for nonprofit organizations to provide critical international aid and services.¹ Rather than distributing aid on the basis of where the need and potential for positive impact are greatest, current counterterrorism measures have caused some nonprofits to avoid the very global hotspots that would benefit the most from their work, damaging the international goodwill and promise for stability that these efforts help create.² Meanwhile, despite the Treasury Department's frequent claims that charities are a

¹ See, *Blocking Faith, Freezing Charity: Chilling Muslim Charitable Giving in the "War on Terrorism Financing,"* American Civil Liberties Union, (June 2009)[hereinafter, "*Blocking Faith*"], at: <http://www.aclu.org/human-rights/report-blocking-faith-freezing-charity>

² See, Written Statement of Ahilan T. Arulanantham, Staff Attorney, ACLU of Southern California), available at <http://www.aclu.org/safefree/general/17536leg20050510.html>; See also, Ahilan T. Arulanantham, A Hungry Child Knows No Politics: A Proposal for Reform of the Laws Governing Humanitarian Relief and 'Material Support' of Terrorism, American Constitution Society (June 2008), available at <http://www.acslaw.org/files/Arulanantham%20Issue%20Brief.pdf>.

significant source of terrorist funding, the government has actually designated and successfully prosecuted relatively few charities for terrorism-related activities.

The generosity of the American people toward those in need around the world is an asset to U.S. counterterrorism efforts, and our government should not continue squandering it by unfairly castigating the charitable sector as a primary source of terrorist financing when the available evidence belies this notion. The Constitution gives Congress the power and the responsibility to oversee Executive Branch activities to ensure compliance with the law, to improve the efficiency and effectiveness of government operations, and to protect individual rights and liberties.³ We urge this Subcommittee to thoroughly investigate and evaluate the Treasury Department's anti-terrorism financing efforts to ensure they fairly and effectively target those entities that specifically intend to support the illegal activities of terrorist organizations, while providing enough transparency and due process to allow legitimate aid and services to flow unimpeded.

II. An Overbroad Statutory and Regulatory Scheme Shrouded in Excessive Secrecy

In 1977 Congress enacted the International Emergency Economic Powers Act (IEEPA), amending the Trading With the Enemy Act of 1917 to clarify and limit the President's power to impose economic sanctions on "any foreign country or a national thereof" during times of national crisis.⁴ To invoke the authority granted under IEEPA the President must formally declare a national emergency, which requires finding an "unusual and extraordinary" threat to the national security, foreign policy, or the U.S. economy existing wholly or substantially outside the United States. Upon such a declaration, the President may impose economic sanctions and block or prohibit any transaction involving "property in which any foreign country or a national thereof has any interest... subject to the jurisdiction of the United States."⁵

For almost twenty years IEEPA-authorized embargoes and sanctions were imposed only on foreign nations and their citizens, as a tool of foreign policy. In 1995, however, President Bill Clinton extended IEEPA's reach through Executive Order 12,947, for the first time imposing sanctions against certain terrorist organizations, rather than nation-states, thereby blocking all of their property and making it illegal for others to knowingly provide them with any contribution of funds, goods or services.⁶ Shortly after the terrorist attacks of September 11, 2001, President George Bush invoked his authority under IEEPA to issue E.O. 13,224, which designated 27 organizations and individuals as "specially designated global terrorists" (SDGTs), and authorized the Secretary of the Treasury and the Secretary of State to name more organizations to the SDGT list.⁷ The term "specially designated global terrorist" is not a term defined in any statute, rather it is entirely a creation of E.O. 13,224. Federal regulations promulgated pursuant to the order

³ See, Frederick M. Kaiser, Walter J. Oleszek, T.J. Halstead, Morton Rosenberg, and Todd B. Tatelman, CONGRESSIONAL RESEARCH SERVICE, CONGRESSIONAL OVERSIGHT MANUAL, CRS REPORT FOR CONGRESS, 5 (May 1, 2007)[*hereinafter*, "CONGRESSIONAL OVERSIGHT MANUAL"] available at <http://www.fas.org/spp/crs/misc/RL30240.pdf>.

⁴ 50 U.S.C. §1701-1707.

⁵ *Id.*, §1702(a)(1)(B).

⁶ Executive Order 12947, 60 Fed. Reg. 5,079 (Jan. 23, 1995).

⁷ Executive Order 13224, 66 Fed. Reg. 49,079 (Sept. 23, 2001).

define SDGTs circularly, as anyone “listed in the Annex or designated pursuant to Executive Order 13,224.”⁸

The E.O. confers broad powers to the Secretary of the Treasury, contains vague criteria for designation, and lacks any evidentiary standards. It allows the Secretary of the Treasury to block the assets of any organization or individual he determines is “owned or controlled by,” or acts “for or on behalf of,” or assists in other ways a person or organization on the SDGT list. Further, the E.O. authorizes the designation of individuals “otherwise associated with” SDGTs. This final provision was declared unconstitutional in 2006, because it authorized designation based on mere association, but the Treasury Department subsequently redefined the provision in federal regulations.⁹ The consequences of designation include the seizure and freezing of all financial and tangible assets, as well as significant civil and potentially criminal penalties.¹⁰

IIEPA effectively allows the government to shut down an organization forever, without notice or hearing, on the basis of secret evidence, and without any meaningful judicial review. The Office of Foreign Assets Control (OFAC), which administers the Treasury Department’s IIEPA authorities, is not required to provide notice or a hearing before designation. The legal scheme does not require OFAC to make any statement of reasons for designation, does not require OFAC to comply with any deadlines for providing notice, and does not identify the burden of proof the agency carries. OFAC has taken the position that in order to designate an individual or organization it needs only a reasonable suspicion that the entity provided “financial, material, or technological support for, or financial services to” or is “otherwise associated” with an SDGT, regardless of whether the entity actually intended to support the SDGT.¹¹ IIEPA and

⁸ See, 31 CFR §594.310 (2007) (defining “specially designated global terrorist” as anyone “listed in the Annex or designated pursuant to Executive Order 13,224”).

⁹ See, *Humanitarian Law Project v. U.S. Dept. of the Treasury*, 463, F. Supp. 2d, 1049 (C.D. Cal. 2006); and, 31 CFR §594.316 (2007).

¹⁰ See, 50 U.S.C. §1705. In addition, the Antiterrorism and Effective Death Penalty Act of 1996 (18 USC §2339), passed in the wake of the Oklahoma City bombing, criminalized providing material support to terrorists or terrorist organizations. Title 18 U.S.C. § 2339A makes it a federal crime to knowingly provide material support or resources in preparation for or in carrying out specified crimes of terrorism, and 18 U.S.C. § 2339B outlaws the knowing provision of material support or resources to any group of individuals the secretary of state has designated a foreign terrorist organization (FTO). The Patriot Act expanded the already overbroad definition of “material support and resources” to include “expert advice or assistance,” and increased penalties for violations of the statute. After successful legal challenges, Congress narrowed these provisions in the 2004 Intelligence Reform and Terrorism Prevention Act to require that a person have knowledge that the organization is an FTO, or has engaged or engages in terrorism. However, the statute still does not require the government to prove that the person *specifically intended* for his or her support to advance the terrorist activities of the designated organization. In fact, the government has argued that those who provide support to designated organizations can run afoul of the law even if they oppose the unlawful activities of the designated group, intend their support to be used only for humanitarian purposes and take precautions to ensure that their support is indeed used for these purposes. *Humanitarian Law Project v. Gonzales*, 380 F. Supp. 2d, 1134, 1142-48, (C.D. Cal. 2005). This broad interpretation of the material support prohibition effectively prevents humanitarian organizations from providing needed relief in many parts of the world where designated groups control schools, orphanages, medical clinics, hospitals and refugee camps. The case is currently before the Supreme Court, and a decision is pending.

¹¹ See, Opinion and Order, *Al Haramain Islamic Found., Inc. v. U.S. Dep’t. of Treasury et al.*, No. 07-1155-K1 (D. Or. Nov. 6, 2008); and, Defs.’ Mot. to Dismiss at 24-25, *KindHearts for Charitable Humanitarian Dev. v. Geithner*, No. 3:08-CV-2400 (N.D. Ohio Dec. 12, 2008) “OFAC need not find that KindHearts intended to support terrorist

the E.O. do not require judicial review of designations. Where entities have tried to challenge their designation, courts have generally applied a highly deferential Administrative Procedures Act standard to their review of OFAC's actions, which requires finding the agency acted in an "arbitrary and capricious" manner in order to overturn the designation.¹² If a court does review the government's evidence supporting designation, it may do so *in camera* and *ex parte*, which denies the designated entity and its attorneys the opportunity to challenge the evidence against it.

The USA Patriot Act further amended IEEPA to allow the government to block or freeze an entity's assets even without a designation, by simply opening an investigation into whether it should be designated.¹³ IEEPA does not specify any standard of suspicion necessary to order a "freeze pending investigation," does not require notice or a meaningful opportunity to contest the allegations, or contain any time limit on the length of the investigation. No criminal charges ever need to be filed in order to effectively shut a charity down for good, and the charity need never be told what evidence or allegations led to its demise.

The laws that authorize the freezing of assets do not set any timeline or limit for the discharge of these funds, such that frozen charitable funds could be held indefinitely. The Treasury Department has denied repeated requests to allow transfer of blocked funds for humanitarian or disaster relief in accordance with the intent of the originators of these funds, charitable donors, even though it has authority to allow transfer of frozen funds.¹⁴

III. Discriminatory Enforcement of Anti-terrorism Financing Laws

The vague and overbroad material support laws afford federal officials wide discretion in selecting organizations for designation and seizure of their assets, opening the door to discriminatory and arbitrary enforcement of these laws. Of nine U.S.-based charities whose assets have been seized after designation as an SDGT by the Treasury Department, seven are Muslim charities.¹⁵ In addition, at least six U.S.-based Muslim charities have been declared under investigation or raided. These charities have not been designated nor had their assets seized pursuant to a blocking order, but have suffered as a result of publicly announced investigations, law enforcement raids, and intrusive surveillance. To date, only three designated U.S.-based Muslim charities have faced criminal prosecution, and only one has been convicted of terrorism-related charges. Many American Muslim community leaders and members have pointed to the selective and disproportionate enforcement of counterterrorism laws against

activities, only that KindHearts engaged in affirmative conduct to provide financial support to entities that were funding Hamas."

¹² 5 U.S.C. § 701 *et seq.* See also, *Holy Land Found. For Relief and Dev. V. Ashcroft*, 333 F.3d. 156, at 162 (D.C Cir. 2003), "The district court correctly reviewed the actions of the Treasury Department under the highly deferential 'arbitrary and capricious' standard."

¹³ The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (PATRIOT Act) of 2001, Pub. L. No. 107-56, 115 Stat. 272.

¹⁴ See, 31 C.F.R. §§501, 597; see also, OMB Watch and Grantmakers Without Borders, *Collateral Damage: How the War on Terror Hurts Charities, Foundations, and the People They Serve*, p. 38, at:

<http://www.ombwatch.org/node/3727>

¹⁵ The two non-Muslim U.S.-based charities OFAC designated are Tamil Rehabilitation Organization-USA and Tamil Foundation.

American Muslim charities as evidence of discriminatory, religion-based targeting of Muslims and their charitable organizations.¹⁶

Beyond American Muslims' perception of discriminatory targeting of their community, it is clear that the federal government is unequally enforcing terrorism financing laws. The government's markedly different treatment of for-profit organizations that have allegedly violated terrorism financing laws demonstrates this unequal enforcement. For instance, in contrast to the treatment of U.S.-based Muslim charities, Chiquita Brands International was allowed to pay a fine of \$25 million following its payment of \$1.7 million directly to two designated terrorist groups in Colombia between 1997 and 2004.¹⁷ Chiquita admitted to these payments in 2003, but no criminal charges were filed, its assets were never seized or frozen, and Chiquita continues to operate.¹⁸ In another example, OFAC has never designated Halliburton or General Electric, or frozen their assets, despite both companies' conduct of business with Iran, which is designated as a state sponsor of terrorism.¹⁹ Former Assistant Secretary of the Treasury Paul Craig Roberts, who served under President Ronald Reagan, observed, "I think the attack on the Muslim charities was just easy, it was an easy, soft target."²⁰

The discriminatory enforcement of these overbroad laws also infringes on religious freedom, as President Barak Obama acknowledged almost a year ago in Cairo, Egypt: "...in the United States, rules on charitable giving have made it harder for Muslims to fulfill their religious obligation."²¹ Though he pledged to work with American Muslims to address this problem, the Treasury Department has not modified its enforcement policies or practices.

But it isn't just Muslim charities that are unconstitutionally chilled from engaging in legitimate religious, humanitarian and advocacy activities as a result of the vague and overbroad anti-terrorist financing laws, and their arbitrary enforcement. The Carter Center, Christian Peacemaker Teams, Grassroots International, Human Rights Watch, International Crisis Group, The Institute for Conflict Analysis and Resolution at George Mason University, the Kroc Institute for International Peace Studies at Notre Dame University, Operation USA, and Peace Appeal Foundation joined in an *amicus* brief filed by the ACLU in support of a challenge to the criminal statute prohibiting material support for terrorism.²² *Amici* argued that as a result of the breadth and vagueness of the material support statute's terms, it was unclear whether legitimate activities such as peace-making, conflict resolution, human rights advocacy, and the provision of

¹⁶ See "Blocking Faith," *supra*, Note 1.

¹⁷ Edward Iwata and Donna Leinwand, *Chiquita Agrees to Fine for Paying Terrorists*, USA Today, March 15, 2007; Carol D. Leoning, *In Terrorism-Law Case, Chiquita Points to U.S.*, Wash. Post, Aug. 2, 2007; Jordy Yager, *Chiquita Fined for Colombia Payments*, L.A. Times, Sept. 18, 2007.

¹⁸ OMB Watch and Grantmakers Without Borders, *Collateral Damage: How the War on Terror Hurts Charities, Foundations, and the People They Serve*, p. 38, at: <http://www.ombwatch.org/node/3727>

¹⁹ Lisa Meyers, *Halliburton Operates in Iran Despite Sanctions*, NBC Nightly News, March 8, 2005, at: <http://www.msnbc.msn.com/id/7119752/>

²⁰ ACLU telephone interview with Paul Craig Roberts, former Assistant Secretary, Department of the Treasury, Panama City Beach, FL, April 9, 2009.

²¹ Remarks of President Barak Obama, "On a New Beginning," (June 4, 2009) at:

http://www.whitehouse.gov/the_press_office/remarks-by-the-president-at-cairo-university-6-04-09/

²² Amicus Brief of Carter Center, Christian Peacemakers, Human Rights Watch, et al, in support of *Humanitarian Law Project, Holder v. Humanitarian Law Project, et al*, No. 08-1498 and 09-89 (Nov. 23, 2009).

aid to needy civilians could expose them to the risk of severe criminal penalties if they involved a group or members of a group that the U.S. government has designated, *or may in the future designate*, as a foreign terrorist organization. Indeed this is no idle concern, as the government has asserted that lawyers could be providing “expert advice or assistance” in violation of the material support statute by filing an *amicus* brief in support of a designated organization.²³

Such a chilling effect on legitimate aid is counter-productive to U.S. counterterrorism goals. Experts suggest that humanitarian organizations can address risk factors that contribute to violent extremism by alleviating severe poverty, providing health care and education services, fostering sustainable community development, fighting corruption, promoting conflict resolution and encouraging democratic institutions.²⁴ The 9/11 Commission staff recommended that “a comprehensive U.S. strategy to counter terrorism should include economic policies that encourage development, more open societies, and opportunities for people to improve the lives of their families and to enhance prospects for their children’s futures.”²⁵

IV. Constitutional Challenge: Due Process Provides Necessary Transparency

The ACLU recently challenged the constitutionality of OFAC’s authority to freeze a charity’s funds pending investigation in a case involving the charity, KindHearts for Charitable Humanitarian Development, Inc. KindHearts was established in 2002 - after the government shut down a number of Muslim charities - with the express purpose of providing humanitarian aid abroad and at home in the United States in full compliance with the law. KindHearts directed all of its employees to implement the Treasury Department’s Voluntary Guidelines for U.S.-Based Charities.²⁶

In February 2006 OFAC blocked all of KindHearts’ assets without a warrant, notice or a hearing, based simply on OFAC’s assertion that it was investigating whether the charity should be designated as a SDGT. KindHearts repeatedly asked OFAC for the reasons for the freeze and notice of the factual basis for OFAC’s actions. But beyond the general allegation that

²³ *Humanitarian Law Project v. Mukasey*, 552 F. 3d 916, at 930 (9th Cir. 2009). See also, Nina Totenberg, *Supreme Court Examines Limit of Material Support*, National Public Radio, (Feb. 23, 2010) at: <http://www.npr.org/templates/story/story.php?storyId=124012925>

²⁴ U.S. Agency for International Development, *Guide to the Drivers of Violent Extremism*, (Feb. 2009) available at: http://www.msi-inc.com/documents/EXTREMISM_DRIVERS_PAPER-final.pdf; and Thomas Baltazar and Elizabeth Kvitashvili, *The Role of USAID and Development Assistance in Combating Terrorism*, *Military Review* (March-April 2007) at: http://inside.usaid.gov/DCHA/CMM/documents/USAID_and_CT_Article.pdf

²⁵ National Commission on Terrorist Attacks, *The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks upon the United States*, (New York: Norton 2004), p. 379, available at: http://www.9-11commission.gov/report/911Report_Ch12.htm

²⁶ OFAC created the *Anti-Terrorist Financing Guidelines: Voluntary Best Practices for U.S.-Based Charities* in 2006 to assist charities in protecting themselves from unintended diversion of charitable support to terrorist organizations. Both Muslim and non-Muslim charities, foundations and civil rights organizations (including the ACLU) have resoundingly criticized the Guidelines for imposing substantial and inefficient administrative burdens on nonprofit organizations with minimal success in uncovering terrorist diversion attempts, and have called for their withdrawal. Although the Guidelines state they are “voluntary,” some charities and foundations have said they view them as de facto legal requirements because they fear that choosing not to follow them will invite government scrutiny. However, organizations and their donors are not assured that complying with the Guidelines will spare them government investigation or blocking orders.

KindHearts was providing material support to Hamas, OFAC has never made specific charges. On May 25, 2007, OFAC informed KindHearts that it had “provisionally” decided to designate it as an SDGT. There is no specific authority in IEEPA for the government to “provisionally” designate an entity, and to this day, KindHearts has not been designated an SDGT, despite the government’s four year block against its assets.

With its May 25, 2007 letter, OFAC produced 35 documents that it identified as the “unclassified and non privileged documents” upon which it relied in provisionally deciding to designate KindHearts. Most of the documents did not even mention KindHearts, and concerned other entities instead. None of the documents explained the specific charges OFAC was considering against KindHearts, or why OFAC thought the evidence supported a potential designation. OFAC stated it “relied upon other classified and privileged documents obtained to date which are not authorized for disclosure...” Guessing at OFAC’s concerns, KindHearts submitted a 28 page preliminary submission to OFAC, which included 1369 pages of evidence. OFAC never responded, and later claimed it misplaced KindHearts’ submission.

In rulings issued on August 18, 2009 and May 10, 2010, Chief Judge James G. Carr of the U.S. District Court for the Northern District of Ohio, Western Division, held that OFAC’s freeze pending investigation was a seizure under the Fourth Amendment, which required a judicially-authorized warrant based upon probable cause. Going forward, the administration must obtain a warrant based on probable cause before seizing an organization’s assets. Further, Judge Carr called upon Congress to adopt “the appropriate structure” for establishing probable cause standards for freezes pending investigation under IEEPA, which would comply with the Fourth Amendment. Judge Carr also ruled that OFAC violated the Fifth Amendment’s guarantee of due process by failing to provide KindHearts notice of the charges against it or a meaningful opportunity to respond. He held that OFAC must remedy these failures by declassifying or adequately summarizing the classified evidence against KindHearts or by allowing KindHearts’ counsel to view the classified evidence pursuant to security clearances and a protective order.

Enforcing the procedural rights encompassed in the Fourth and Fifth Amendments will produce greater transparency in OFAC actions, and will better protect the religious, political and associational rights guaranteed under the First Amendment. The *KindHearts* decision gives Congress the opportunity to re-evaluate IEEPA in light of OFAC’s secretive, arbitrary and discriminatory enforcement activities, which neither keep us safe nor protect American values.

V. The Constitutional Role of Congressional Oversight in Ensuring Public Accountability

The American people depend upon their elected representatives in Congress to oversee and regulate the government’s activities on their behalf and for their benefit. President Woodrow Wilson described Congress’s obligation to provide a window into government operations for the American people:

It is the duty of a representative body to look diligently into every affair of government and to talk about much of what it sees. It is meant to be the eyes and the voice, and to embody the wisdom and will of its constituents.²⁷

²⁷ Woodrow Wilson, *Congressional Government*, 303, (1885).

To achieve this goal, the Constitution gives Congress ample authority to investigate executive branch activities, including national security programs, and the tools to regulate them. Congress gave the President broad authority under IEEPA to regulate financial transactions in a national emergency, and Congress has the responsibility to ensure this power is used wisely, and in conformance with constitutional requirements.

Unfortunately, the Treasury Department's platitudes about the effectiveness of its anti-terrorism measures have not been borne out by the facts. In a 2004 report on terrorist financing, the 9/11 Commission staff found that the use of IEEPA against U.S. persons or organizations "raises significant civil liberties concerns," noting that IEEPA "allows the government to shut down an organization on the basis of classified evidence, subject only to a deferential after-the-fact judicial review."²⁸ The staff reported particular unease regarding the power to freeze assets pending investigation, which it described as, "a powerful weapon with potentially dangerous applications," that lets "midlevel government officials" shut down organizations with "no formal process, let alone any adjudication of guilt."²⁹ Treasury officials acknowledged to the Commission staff that the evidentiary basis for designation decisions were "quite weak" in the post-9/11 period, which led to questionable designations that undermined our international counterterrorism efforts by making other nations "unwilling to freeze assets or otherwise act merely on the basis of a U.S. action."³⁰ Georgetown University Law Professor Laura Donohue explained that

...the executive's bypassing of judicial mechanisms, in relying on less robust standards, made more likely a wrongful designation – with detrimental consequences for the United States. By 2004, the United Nations recognized the list, largely constructed by the United States, had "begun to lose credibility and operational value" and needed updating... In March 2006 a UN Security Council report expressed concern about the program's effectiveness. The Council of Europe issued a report that said the UN list violated the European Convention on Human Rights: it provided neither any protection against arbitrary decisions, nor did it include mechanisms to ensure that the allegations made by governments were accurate [internal footnotes omitted].³¹

Likewise, a 2005 Government Accountability Office (GAO) study suggested that the shroud of secrecy under which OFAC's exercises its IEEPA authorities raised questions about the effectiveness of these important programs:

The lack of accountability for Treasury's designations and asset blocking program creates uncertainty about the department's progress and achievements. U.S. officials with oversight responsibilities need meaningful and relevant information

²⁸ National Commission on Terrorist Attacks Upon the United States, *Monograph on Terrorist Financing: Staff Report to the Commission*, p. 8 (Aug. 21, 2004) available at: http://govinfo.library.unt.edu/911/staff_statements/911_TerrFin_Monograph.pdf

²⁹ *Id.*, at 112.

³⁰ *Id.*, at 79 and 48.

³¹ Laura K. Donohue, *The Cost of Counterterrorism: Power, Politics and Liberty*, Cambridge University Press, (2008).

to ascertain the progress, achievements, and weaknesses of U.S. efforts to designate terrorists and dismantle their financial networks as well as hold managers accountable.³²

GAO found in a 2009 follow-up report that Treasury's Terrorism and Financial Intelligence Office, which manages OFAC, continues to face deficiencies in interagency cooperation and strategic workforce planning, and has yet to develop appropriate performance measures to effectively assess core program activities.³³ OFAC, for instance, does not have a current strategic plan and has implemented inconsistent performance measures, which puts its ability to properly manage its resources to address national security threats at risk.³⁴ Congress must address these deficiencies that risk both our liberties and our security, by bringing needed transparency to the Treasury Department's procedures through vigorous public oversight and the establishment of effective due process mechanisms that give entities impacted by these broad authorities a meaningful opportunity to defend themselves before a neutral arbiter.

Congress is armed with many tools to compel compliance with its investigations. The Congressional Research Service Congressional Oversight Manual lists six constitutional provisions authorizing Congress to investigate, organize, and manage executive branch activities.³⁵ And the Supreme Court has interpreted the constitutional grant of legislative power as providing Congress "broad" authority to investigate – both to ensure that the laws it passes are effective, and to gather evidence to inform future legislation.³⁶ Congress can use these powers to effectively leverage cooperation from the executive branch, and can directly compel compliance with congressional inquiries when necessary, even in matters of national security. "A legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change," the Supreme Court ruled in 1927, noting that the power to compel is necessary because "experience has taught that mere requests for such information are often unavailing, and also that information which is volunteered is not always accurate or complete."³⁷ We urge this Subcommittee to thoroughly investigate and evaluate the Treasury Department's anti-terrorism financing efforts to ensure

³² Government Accountability Office, *Terrorist Financing: Better Strategic Planning Needed to Coordinate U.S. Efforts to Deliver Counter-Terrorism Financing Training and Technical Assistance Abroad*, p. 29 (Oct. 24, 2005) available at: <http://www.gao.gov/new.items/d0619.pdf>

³³ Government Accountability Office, *Combating Illicit Financing: Treasury's Office of Terrorism and Financial Intelligence Could Manage More Effectively to Achieve its Mission*, (Sept. 2009) available at: <http://www.gao.gov/new.items/d09794.pdf>

³⁴ *Id.*, at 18-23.

³⁵ Frederick M. Kaiser, Walter J. Oleszek, T.J. Halstead, Morton Rosenberg, and Todd B. Tatelman, CONGRESSIONAL RESEARCH SERVICE, CONGRESSIONAL OVERSIGHT MANUAL, CRS REPORT FOR CONGRESS, 5 (May 1, 2007), available at <http://www.fas.org/sgp/crs/misc/RL30240.pdf>. Two non-government organizations dedicated to constitutional principles and effective government, the Constitution Project and the Project on Government Oversight, have produced detailed manuals on the authorities and mechanics of congressional oversight investigations. They may be found here: <http://www.constitutionproject.org/newsdetail.asp?id=397>

³⁶ *Watkins v. U.S.*, 354 U.S. 178, 187 (1957). "The power of the Congress to conduct investigations is inherent in the legislative process. That power is broad. It encompasses inquiries concerning the administration of existing laws as well as proposed or possibly needed statutes. It includes surveys of defects in our social, economic or political system for the purpose of enabling the Congress to remedy them. It comprehends probes into departments of the Federal Government to expose corruption, inefficiency or waste."

³⁷ *McGrain v. Daugherty*, 273 U.S. 135, 174-175 (1927).

they effectively target those entities that specifically intend to support the illegal activities of terrorist organizations, while providing enough transparency and due process to allow legitimate aid and services to flow unimpeded.

VI. Recommendations For Congress

1. Congress should reform the statutory scheme for designation of persons and entities as SDGTs under IEEPA to establish full due process protections, including:

- Issuing transparent standards governing OFAC designations.
- Creating a higher legal standard for designation.
- Precisely defining the criteria for an individual or entity to be found an SDGT.
- Enacting a narrower statutory definition of SDGT.
- Providing timely notice including a full list of charges and statement of reasons.
- Restricting the use of secret evidence.
- Providing a meaningful opportunity to defend, including the ability to submit evidence and a hearing.
- Providing meaningful judicial review of agency action.
- Creating a statutory basis for challenging designations and asset freezing process.
- Creating an effective redress program for individuals or organizations mistakenly flagged as a designated person.

2. Congress should enact a statutory scheme for the seizure of assets of suspected SDGTs that complies with the Fourth Amendment, as set out in Chief Judge Carr's decisions in the *KindHearts* case, by:

- Implementing a warrant and probable-cause procedure for the seizure of assets of suspected SDGTs.
- Requiring that the Secretary of the Treasury utilize the authority granted under the Civil Asset Forfeiture Reform Act of 2000, in lieu of Executive Order No. 13,224, to seize the assets of suspected SDGTs.

3. Promote greater transparency and accountability in Treasury Department anti-terrorism financing enforcement:

- Require more specific detail in OFAC reports to Congress, so that Congress can determine whether OFAC designations are appropriate and effective, and to ensure constitutional standards are met.
- Conduct regular oversight hearings on anti-terrorism financing policies as applied to the charitable and nonprofit sector.
- Request the GAO conduct an investigation of frozen charitable funds to determine how much is currently blocked, under what authority, whether it was blocked in accordance with judicial warrants based upon probable cause, and what barricades exist to transferring the funds to fulfill the charitable purposes of the donors.

VII. Conclusion

We commend the Subcommittee for holding this hearing to examine how the uneven enforcement of anti-terrorism financing regulations is unnecessarily impeding legitimate charitable and humanitarian work. While the Treasury Department has an important duty to perform in stemming terrorist financing, it must accomplish this obligation without unjustly infringing on the rights of innocent Americans, or chilling free speech and association. Greater transparency and due process will help to ensure the Treasury Department is using its authorities only against true threats to our national security. Thank you for your efforts to increase public awareness of this issue.

**Testimony of Daniel L. Glaser,
Deputy Assistant Secretary
(Terrorist Financing and Financial Crimes)
U.S. Department of the Treasury
Before the House Committee on Financial Services
Subcommittee on Oversight and Investigations**

I. Introduction

Chairman Moore, Ranking Member Biggert, and distinguished members of the Committee, thank you for the opportunity to appear before you today to talk about the Treasury Department's efforts to protect charities from abuse by terrorist and our extensive outreach efforts to the charitable and Muslim American communities.

Before discussing the substance of our important work related to charities issues, it is important to note at the beginning of my testimony that Treasury's role in combating terrorist financing, as well as its role in the broader U.S counter-terrorism mission, relies heavily upon the strong support of Congress, and the international and private sector communities. Treasury works closely with the law enforcement, regulatory, diplomatic, and intelligence communities within our own government, as well as our international counterparts around the world, state and local governments, and the private sector to contribute to a comprehensive counter-terrorist financing strategy that diminishes the capacity of terrorist organizations and their support networks. I would also like to note the important role that community organizations, especially from those communities that terrorists are most seeking to exploit, play in supporting our efforts to tackle terrorist financing. It is only through these collaborative efforts that we can succeed collectively.

Treasury understands the importance of charitable giving both at home and abroad and seeks to encourage charitable giving while also protecting charities from terrorist abuse or exploitation. Charities have had an immediately beneficial impact on developing communities around the world such as providing aid to areas afflicted by disaster and conflict, and supplying resources to increase access to education and medical services. Charities serve their local communities in the U.S., as well as overseas in relief areas and conflict zones. Charitable giving and voluntarism have a long tradition in the U.S., and our country is a leader in the world year-after-year in charitable donations. This spirit of giving is something that unites Americans of all backgrounds, from diverse religious traditions and ethnic heritages.

However, the sad truth is that terrorist organizations have established and used charities, and have exploited well-intentioned donors. One of the Treasury Department's core missions is to identify, disrupt, and dismantle illicit financial networks that support

terrorists, organized criminals, WMD proliferators, and other threats to national security.¹ We will continue to use every tool at our disposal to stop the flow of illicit money to those who seek to harm our citizens. In regards to charitable organizations, our challenge is to close the avenue of material support to terrorist activities while at the same time supporting avenues that allow for legitimate and well-intentioned donor activity.

Terrorist organizations have abused and exploited charities of all backgrounds. And there is no doubt that terrorist organizations such as al Qaida, Hamas, and Hizbollah have abused and exploited Muslim charities. Though Treasury actions with respect to Muslim charities have been relatively infrequent and none have occurred for almost three years, we understand that the important steps that we have taken to target charities that do support terrorist organizations, combined with other successful counter-terrorism efforts across our government, have had the unfortunate and unintended consequence of causing a chilling effect on well-intentioned donor activity within Muslim American communities. President Obama recognized this in his speech in Cairo last year when he said, "in the United States, rules on charitable giving have made it harder for Muslims to fulfill their religious obligation. That's why I'm committed to working with American Muslims to ensure that they can fulfill zakat." Treasury shares the President's commitment to working with the Muslim American charitable community to protect their ability to fulfill their religious obligations. This has informed our outreach efforts with the charitable and Muslim American communities over the last few years, which I will discuss in more detail later.

II. Combating Terrorist Abuse of Charities

Charities are an attractive target for terrorist organizations for a variety of reasons, including:

- Charities enjoy the public trust, have access to considerable sources of funds, and are often cash-intensive.
- Some charities have a global presence that provides a framework for national and international operations and financial transactions, often within or near those areas that are most exposed to terrorist activity.
- Depending on the legal form of the charity and the country of origin, charities may often be subject to little or no governmental oversight (for example, registration, record keeping, reporting and monitoring), or few formalities may be required for their creation (for example, there may be no skills or starting capital required, no background checks necessary for employees).

¹¹ The Department of Justice, the Department of State and many elements of the U.S. Government also share this important mission. This testimony is intended to specifically address Treasury's mission and authorities.

- Unlike for-profit organizations, charitable funds are meant to move in one direction only. Accordingly, large purported charitable transfers can move without a corresponding return of value.
- Charities attract large numbers of unwitting donors along with the witting, thus increasing the amount of money available to terrorist organizations.
- The legitimate activities of charities related to terrorist organizations – such as the operation of schools, religious institutions, and hospitals – create fertile recruitment grounds, allowing terrorists to generate support for their causes and to propagate violent and extremist ideologies.
- By providing genuine relief and development services – as nearly all of the charities associated with terrorist organizations do – these charities benefit from public support, generating reluctance by many governments to take enforcement action against them.

Terrorist organizations have taken advantage of these characteristics to infiltrate the charitable sector and exploit charitable funds and operations to cover for or support terrorist activities or agendas. Terrorist organizations have historically used charities in a number of ways. In some cases, charities finance terrorist organizations by diverting funds ostensibly intended for charitable purposes. In other cases, terrorist organizations or individuals sympathetic to them establish charities that provide essential services in order to radicalize communities, build support networks, and provide a recruiting base within vulnerable populations. Such charities are integral components of the terrorist organizations, and vital to their ability to raise funds and legitimize themselves.

There have been many examples around the world of charities that have been integral components of terrorist networks. Examples include: the Revival of the Islamic Heritage Society, which was designated for providing financial and material support to al Qaida; Union of Good, which provides support to Hamas; the Martyrs Foundation, which provides support to Hizbollah; Pakistan-based Jammāt ud Dawa (JUD), which provides support networks to Lashkar E Tayyiba (LT), which was designated by the Department of State; and Tamils Rehabilitation Organization (TRO), which was designated for providing support to the Liberation Tigers of Tamil Eelam (LTTE). JUD and Union of Good are particularly good examples of charities, which provide actual social services to communities, but at the same time are important components of the overall terrorist mission of the organizations they support.

These types of charities have not been limited to organizations located overseas. There have been numerous examples of terrorist organizations raising funds through charities in the United States as well. Through the collective efforts of the U.S. law enforcement community, this type of conduct has become far more difficult. Treasury's primary contribution to these domestic law enforcement efforts has been through the application of our designation authorities under the International Emergency Economic Powers Act (IEEPA). Below, I will describe (1) the legal authorities and criteria for these designations, (2) the processes that were employed, before, during, and after the formal designations and (3) a description of the eight U.S.-based charities that have been designated under this authority,

1. Legal Authority for Terrorism Designations: Executive Order 13224

Since 1977, IEEPA has authorized the President to take certain steps to combat threats to the national security, foreign policy or economy of the United States. Under IEEPA, the President may investigate, block assets and prohibit transactions with designated persons. The United States Government has successfully utilized this decades-old authority to confront numerous threats over the years.

Issued on September 23, 2001 under IEEPA and other authorities, E.O. 13224 allows the USG to disrupt the support networks of terrorists and terrorist organizations by authorizing the U.S. Government to designate them and block their assets. Pursuant to this authority, the Secretary of the Treasury, in consultation with the Secretary of State and the Attorney General, may designate individuals and entities that:²

- Are "owned or controlled by" or "act for or on behalf of" designated terrorists or terrorist organizations;
- "Assist in, sponsor, or provide financial, material, or technological support³ for, or financial or other services to or in support of" acts of terrorism or designated terrorists or terrorist organizations; and
- Are "otherwise associated"⁴ with designated terrorists or terrorist organizations.

2. The IEEPA Designation Process

Pre-Designation Process

For each Treasury designation, Treasury prepares an evidentiary package or "administrative record," which includes identifiers and the basis for designation, for each potential designee. These administrative records are reviewed by the Departments of the

² IEEPA also provides for authority to designate individuals or entities that pose a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States. Authority to designate under this criterion has been delegated to the State Department.

³ "Financial, material, or technological support" is defined at 31 CFR 594.317.

⁴ We note that a federal district court found that designations based on the "otherwise associated with" provision of EO 13224 was unconstitutionally vague on its face and overbroad. See *Humanitarian Law Project v. United States Department of Treasury*, 463 F.Supp.2d 1049, 1070-71 (C.D.Cal., Nov. 21, 2006), revised on reconsideration, *Humanitarian Law Project v. U.S. Dept. of Treasury*, 484 F.Supp.2d 1099, 1104-07 (C.D.Cal., Apr. 20, 2007) (holding that the subsequently issued regulatory definition of "otherwise associated with" supplied by 31 C.F.R. § 594.316 cured the defect and was sufficiently precise to satisfy the Constitution), affirmed on appeal, 578 F.3d 1133 (9th Cir. 2009). Under the regulatory definition, "otherwise associated with" means "[t]o own or control" or "[t]o attempt, or to conspire with one or more persons, to act for or on behalf of or to provide financial, material, or technological support, or financial or other services, to" 31 C.F.R. § 594.316.

Treasury, State, and Justice, including by attorneys from these agencies to ensure that the administrative record is legally sufficient. The record must show that there is a reasonable basis to determine that the target meets the criteria for designation. Treasury also consults with other relevant U.S. Government agencies as appropriate to ensure that proposed designations are consistent with the operational and policy interests of other agencies, as well as with the strategic national security and foreign policy goals of the United States. No designation proceeds absent full consultations with all relevant U.S. Government agencies.

Implementation and Effects of Designation

When the U.S. Government designates an individual or entity, it publishes notice of the designation on its website, adds the name to its List of Specially Designated Nationals and Blocked Persons (SDN List), which is also posted on the Office of Foreign Assets Control's (OFAC) website, and publishes the designation in the *Federal Register*. At the time of designation, OFAC makes a good faith effort to provide a designated party in the United States with an explanation of the effect of the designation, as well as information on procedures to seek a license or challenge the designation. OFAC publicizes designations by RSS feed, email, fax, Fedwire, CHIPS, and publication in the *Federal Register*. The Department of State publishes its designations in the *Federal Register* and depends on OFAC to inform the banking community of the designation., The U.S. Government generally issues a public release that sets forth the reasons for the designation.

Post-Designation

Compliance by U.S. Persons

All U.S. persons have an obligation to identify and block property, including financial property, of individuals and entities appearing on the SDN List. Most large U.S. companies and nearly all U.S. financial institutions have implemented procedures to electronically screen their transactions for references to designated parties. New designations are added to this "interdiction" software to identify transactions in which sanctions targets may have an interest. If a U.S. person identifies an account or transaction containing an interest of an SDN, the transaction/account must be blocked. Any property blocked due to an interest of an SDN must be reported to OFAC within 10 days. Blocked financial property must be kept in interest-bearing accounts. On an ongoing basis, U.S. persons are prohibited from doing business with SDNs, and any property, financial or otherwise, containing an interest of an SDN that comes into the possession of a U.S. person must be blocked.

As of April 2010, the total amount of funds blocked due to an interest of U.S.-based charities collectively, is approximately \$ 3.2 million. As discussed below, these funds have in certain instances been made available to the designated entities through a licensing process to meet expenses such as legal fees. However, because the U.S.

Government does not take title to blocked funds, any question involving the broad redirecting or transferring of such funds raises several complex legal issues. Even putting aside issues of title, any final disposition of such funds would likely need to consider the potential competing claims of such parties as employees, third-party contactors, and terrorist victims who might seek to attach blocked funds pursuant authority granted to them by Congress under the Terrorism Risk Insurance Act (TRIA).

Licensing

OFAC may use its authority to license certain transactions that otherwise would be prohibited. For example, OFAC regularly issues licenses to permit designated entities to pay legal fees and other basic expenses such as rent, food, and utilities.

Delisting

Delisting is a mechanism by which targeted sanctions with respect to a designated person, including a designated charitable organization, are lifted. As with the initial designation process, any delisting involves the preparation of an administrative record and inter-agency consultation. To be delisted, designated persons generally must petition the designating agency for delisting and credibly demonstrate that they no longer engage in or plan to engage in the activity for which they were designated and/or that the circumstances resulting in the designation otherwise no longer apply.⁵ The designee is typically required to sign an affidavit to that effect.

Judicial Review

All final agency actions taken by OFAC are subject to judicial review in U.S. courts under the Administrative Procedure Act. Designees can and do avail themselves of the U.S. judicial system to challenge their designations. As noted above, Congress enacted IEEPA in 1977, and it has been challenged in court periodically since that time across a wide range of sanctions programs. Treasury actions under IEEPA have been challenged repeatedly, and courts consistently have upheld both the Constitutional underpinnings of our authorities and our application of them.

⁵ For example, in November 2009, OFAC delisted Patricia Rosa Vinck, Barakaat International, and Barakaat International Foundation, having found that Vinck and the two entities no longer presented a significant threat of supporting terrorism. Vinck, Barakaat International, and Barakaat International Foundation were all designated by the Treasury Department under E.O 13224 and by the U.N. 1267 Committee. The Barakaat organizations were part of a financial conglomerate operating in 40 countries around the world that facilitated the financing and operations of al Qaida and other terrorist organizations. Vinck served as secretary of GRF's Belgium offices and facilitated its activities [in support of terrorism.] Following U.S. and U.N. designations, Vinck ceased her activities on behalf of GRF, and the two Barakaat entities are no longer operating. OFAC's delisting action was taken in conjunction with a removal of the three names from the United Nations 1267 Sanctions Committee Consolidated List of individuals and entities subject to U.N. sanctions measures.

3. Designations of U.S.-based Charities

Since 2001, Treasury has designated the following eight domestic charities under Executive Order (E.O.) 13224.⁶ As noted above, as of April 2010, the total amount of funds blocked due to an interest of these charities, is approximately \$3.2 million.

- Holy Land Foundation: The Holy Land Foundation for Relief and Development (HLF) was designated on Dec. 2, 2001 and May 21, 2002 as a charity that provided millions of dollars of material and logistical support to Hamas. HLF, originally known as the Occupied Land Fund, was established in California in 1989 as a tax-exempt charity. HLF supported Hamas activities through direct fund transfers to its offices in the West Bank and Gaza that are affiliated with Hamas and transfers of funds to Islamic charity committees ("zakat committees") and other charitable organizations that are part of Hamas or controlled by Hamas members.
- Global Relief Foundation: The Global Relief Foundation (GRF) was designated on Oct. 18, 2002 providing for support for and assistance to Usama bin Laden (UBL), al Qaida, and other known terrorist groups.
- Benevolence International Foundation: Benevolence International Foundation (BIF-USA) was designated on Nov. 19, 2002 after its CEO was indicted by the Justice Department for operating BIF as a racketeering enterprise and providing material support to terrorist organizations, including al Qaida. BIF was incorporated in Illinois in 1992 and was a U.S., tax-exempt, not-for-profit organization whose stated purpose was to conduct humanitarian relief projects throughout the world.
- Al Haramain Foundation—U.S. Branch: Al Haramain Foundation—US Branch (AHF) was designated on Sept. 9, 2004 by the United States and the UN 1267 Sanctions Committee because of AHF's support for al Qaida. Individuals associated with the branch tried to conceal the movement of funds intended for Chechnya by omitting them from tax returns and mischaracterizing their use, which they claimed was for the purchase of a prayer house in Springfield, Missouri.
- Islamic African Relief Agency: Islamic African Relief Agency (IARA) was designated on Oct 13, 2004 for providing direct financial support for Usama Bin Ladin (UBL) and al Qaeda's precursor, Maktab Al-Khidamat (MK). IARA, MK and UBL commingled funds and cooperated closely in the raising and expenditure

⁶ In addition to these designations of U.S.-based charities, OFAC in 2006 exercised its statutory authority to block pending investigation (BPI) the assets of KindHearts for Charitable Humanitarian Development, Inc ("Kindhearts"), an NGO operating out of Toledo, Ohio, based on evidence that the charity was providing financial support to Hamas. Kindhearts challenged this action and litigation is ongoing. BPIs are distinct from designation. They have been used effectively to prevent asset flight and support key enforcement investigations.

of funds. IARA engaged in a joint program with an institute controlled by UBL that was involved in providing assistance to Taliban fighters. As of early 2003, information available to the U.S. showed that IARA was also responsible for moving funds to the Palestinian territories for use in terrorist activities, notably serving as a conduit to Hamas in one Western European country. IARA is headquartered in Khartoum, Sudan and had maintained over 40 offices throughout the world, including one in Columbia, Missouri.

- Goodwill Charitable Organizations: The Goodwill Charitable Organization (GCO) was designated on July 24, 2007 for providing financial support to Hizbollah directly and through the Martyrs Foundation in Lebanon. GCO was established as a fundraising office in Dearborn, Michigan by the Martyrs Foundation, which is a Hizbollah front organization that reports directly to the leadership of the Martyrs Foundation in Lebanon. Hizbollah recruited GCO leaders and had maintained close contact with GCO representatives in the United States.
- Tamils Rehabilitation Organization: Tamils Rehabilitation Organization (TRO) was designated on Nov 15, 2007 for serving as a front to facilitate fundraising and procurement for the designated terrorist group Liberation Tigers of Tamil Eelam (LTTE). In the United States, TRO had raised funds on behalf of the LTTE through a network of individual representatives. TRO had also facilitated LTTE procurement operations in U.S., including the purchase of munitions, equipment, communication devices, and other technology for the LTTE. TRO's efforts worldwide reportedly had allowed the LTTE to use humanitarian aid, which TRO collected from the international community after the December 2004 tsunami, to launch new campaigns to strengthen LTTE's military capacity.
- Tamil Foundation: US-based Tamil Foundation was designated on Feb. 11, 2009 for serving as a front to facilitate fundraising for LTTE. Over the course of many years, the Tamil Foundation, based in Cumberland, Maryland, and the TRO had co-mingled funds and carried out coordinated financial actions.

III. Treasury Outreach, Guidance, and Partnerships with the Charitable Sector

As President Obama has recognized, the ongoing terrorist threat and our enforcement actions have created an unintended chilling effect, particularly in Muslim communities, on charitable giving. This is especially true with respect to charitable interests in servicing vulnerable and needy populations abroad in areas where terrorist organizations are most active.

Overcoming these challenges requires a strong partnership with the charitable sector and a shared commitment by other elements of the national security and development communities. This realization, together with the underlying need to protect charities

from terrorist abuse, frames Treasury's efforts to (1) conduct outreach, (2) issue guidance, and (3) develop a partnership with the charitable sector.

1. Conducting Outreach

Treasury's outreach to the charitable sector and Muslim American communities generally consists of an ongoing discussion relating to the following four fundamental themes:

(i) *The USG recognizes and strongly supports the essential role of charitable giving in Muslim, American and global society.* Almsgiving is an important expression of religious faith for Muslims throughout the world. Charity is one of the pillars of Islam, pursuant to which observant Muslim men and women have a duty to give a certain percentage of their earnings to specified recipients (Zakat), as well provide alms throughout the year (Sadaqah). Such giving builds local communities, and also links these communities to the other parts of the world. Charitable giving and philanthropy are core American values and integral parts of American culture and society. As an example, in recent years the American people have donated more than \$200 billion annually to charitable causes, including to Muslim populations such as those affected by the 2004 tsunami in Indonesia and Southeast Asia and the 2005 earthquake in Pakistan.

(ii) *Terrorist organizations continue to effectively exploit charities to finance their operations and to cultivate broader support from vulnerable populations.* Terrorist organizations devote considerable resources, time and attention to developing charitable, social and welfare services as a key means of cultivating support. It must be understood that charities providing social services to legitimate communities may nevertheless be operating on behalf of terrorist organizations, and that the provision of such services does not excuse such support.

(iii) *U.S. Government efforts to combat terrorism are not intended to single out any specific community.* Our outreach must demonstrate that Treasury and broader U.S. actions to combat terrorist exploitation of the charitable sector do not seek to target Muslims or Muslim charities. As I stated earlier, while terrorist organizations such as al Qaida, Hamas, and Hizbollah have exploited Muslim charities, it is worth recognizing that over the years terrorists have exploited charities of many backgrounds.

(iv) *The U.S. Government and the charitable sector must work together to promote safe and effective charitable activity and to protect the sector from terrorist exploitation.* Such collaboration is needed not only to develop effective and practical safeguards to assist charities in protecting against terrorist exploitation, but also to identify or develop ways in which charities can assist vulnerable populations in areas where terrorist organizations operate. Treasury has expended considerable efforts to work with the charitable sector to advance both of these objectives.

To promote these fundamental themes of our outreach to the charitable sector and donor communities, Treasury frequently meets and collaborates on projects with specific communities and organizations, such as the Arab- and Muslim American communities, as

well as representatives from the broader charitable sector. Treasury also participates in interagency outreach events with the Department of Homeland Security (DHS), the Department of Justice (DOJ), and FBI headquarters and field offices, including bi-monthly DOJ Civil Liberties Division outreach events with the Arab, Sikh and Muslim communities.

2. Developing and Issuing Guidance

A significant portion of Treasury's outreach is devoted to the development of guidance to assist the charitable sector in adopting protective measures against terrorist abuse of charities. Over the past several years, Treasury has developed, issued, promoted and updated various documents to assist the charitable sector in this effort. Such documents include:⁷

- A Summary of Charitable Organizations Designated Under Executive Order 13224 and Executive Order 12947 and Foreign Terrorist Organizations Appearing as Potential Fundraising Front Organizations;
- Additional Background Information on Designated Charities;
- Background Information on Certain FTOs with Aliases Appearing as Potential Fundraising Front Organizations;
- An OFAC Risk Matrix for the charitable sector;
- The U.S. Department of the Treasury Anti-Terrorist Financing Guidelines: Voluntary Best Practices For U.S.-Based Charities
- A Response to Comments Submitted on the U.S. Department of the Treasury Anti-Terrorist Financing Guidelines: Voluntary Best Practices for U.S.-Based Charities;
- A Counter-Terrorist Referral Form for Charities;
- Typologies and Open Source Reporting On Terrorist Abuse of Charitable Operations in Post-Earthquake Pakistan and India; and

⁷ These documents and additional information to assist charities in protecting against terrorist exploitation are available on the Treasury website at <http://www.treas.gov/offices/enforcement/key-issues/protecting/index.shtml/>.

- A Response to Inquiries from Arab American and Muslim American Communities for Guidance on Charitable Best Practices.

The importance of Treasury's efforts to develop guidance for the charitable sector in combating terrorist exploitation is heightened by the fact that, unlike financial institutions, there is no regulatory regime or supervisory mechanism to specifically address terrorist abuse of charity. The obligation on charities, as with all U.S. persons, is simply to comply with the law. We are not suggesting the establishment of such a regulatory regime, but this means that our efforts to develop and issue guidance materials represent our primary means of assisting the charitable sector in developing and implementing effective safeguards against terrorist abuse. We will continue to provide additional products and information that can help charities address the threat of terrorist exploitation while promoting their charitable mission.

Treasury's Anti-Terrorist Financing Guidelines: Voluntary Best Practices for U.S.-Based Charities

Much of Treasury's time and attention in issuing guidance has focused on developing and updating measures and best practices to protect charities from terrorist abuse in Treasury's *Anti-Terrorist Financing Guidelines: Voluntary Best Practices for U.S.-Based Charities* ("Guidelines"). Over the past several years, the Guidelines have been developed in close consultation with the charitable and Muslim American communities, and have been critical in raising awareness of these issues and promoting the adoption of effective safeguards for charities in the United States and abroad.

Treasury initially released the Guidelines in November 2002 in direct response to requests from the Arab and Muslim American communities for policies and practices to protect against potential terrorist abuse and to assist in compliance with new terrorist financing authorities, including Executive Order 13224. Treasury then solicited feedback from the charitable sector, which indicated that the Guidelines could be substantially improved to assist in identifying reasonable yet effective measures to protect against terrorist abuse. In December 2005, based on extensive review and comment by public and private sector interested parties, Treasury revised and released amended Guidelines in draft form for further public comment. Based on the comments received, Treasury further amended the Guidelines to improve their utility to the charitable sector in adopting practices that can better protect it from terrorist exploitation.

Treasury issued the Guidelines as voluntary best practices, and they are not intended create any new legal requirements. They are intended to provide guidance on fundamental principles of good charitable practice; governance, accountability and transparency; financial accountability and transparency; programmatic verification; and anti-terrorist financing best practices. They are risk-based, reflecting Treasury's recognition that a "one-size-fits-all" approach is untenable and inappropriate due to the diversity of the charitable sector and its operations, and they acknowledge that certain exigent circumstances (such as catastrophic disasters) may make application of best practices difficult. The Guidelines also include an annex that chronicles the nature of

terrorist abuse of charities. Moreover, the Guidelines are not an exhaustive or exclusive set of best practices, and Treasury recognizes that many charities, through their extensive experience and expertise in delivering international aid, have already developed effective internal controls and practices that lessen the risk of terrorist financing or abuse.

The initial development and subsequent evolution of the Guidelines launched a strong and ongoing dialogue with the charitable sector. This dialogue has led to a greater awareness of the risks of terrorist abuse in the charitable sector, and as a result, charities have adopted more proactive approaches to protect their assets and the integrity of their operations.

Treasury is committed to continuing to update, amend and improve the Guidelines to make them more useful to the charitable sector, but Treasury does not agree that revoking the Guidelines would be beneficial. The Guidelines serve as one of the only vehicles for assisting charities in responding to the real threat of terrorist abuse of the sector. They are for this reason important, and we will continue to work with interested parties in the charitable sector to amend and improve the Guidelines, as we have done in the past.

Over the past year, Treasury has held substantial discussions with various elements of the charitable sector and Arab and Muslim American communities to identify concerns with the Guidelines and ways that Treasury could improve their utility in protecting and promoting charitable giving. Based on these discussions, Treasury is currently pursuing a number of actions to amend the Guidelines and issue additional information to assist the charitable sector, including by developing the following materials:

- A comprehensive document of answers to frequently asked questions (FAQs) by the charitable sector and donors;
- A summary of U.S. counter-terrorist financing laws and regulations that impact charities;
- An explanation of sanctions laws and regulations, including the importance and objectives of sanctions, the designation process, and the variety of due process protections provided in our domestic sanctions regime;
- Updates to annex of the Guidelines to help clarify the current risk and type of exploitation of charities by specific terrorist organizations in certain high risk regions; and
- A reference list to existing non-profit good governance best practices;

3. Developing a Strategic Partnership with the Charitable Sector

The final component of Treasury's engagement with the charitable sector and Arab and Muslim American communities to combat terrorist exploitation of charities involves developing a strategic partnership. Such a partnership is necessary to both protect charity from terrorist abuse and promote charitable assistance in high risk regions where terrorist organizations operate. Neither the government nor the charitable sector, acting alone, can adequately address these objectives. The expertise, access, and resources of both government and the charitable sector are required to advance these shared interests.

Over the past several years, Treasury has led much discussion – both within the government and with key stakeholders in the charitable sector and Arab and Muslim communities – of how collaboration might best be achieved to protect and promote charitable activity in places where terrorist organizations are particularly active. These discussions have focused on the development of targeted alternative relief mechanisms. The development of such mechanisms could enable legitimate donor communities to support vulnerable populations that currently rely on terrorist groups for social services and could also be helpful in continuing to provide charitable services to vulnerable populations in the context of designating charities associated with terrorist organizations that had previously serviced such populations. The alternative relief concept is intended to provide a safe and effective way for individuals to contribute assistance into critical regions where aid is desperately needed, but where terrorist organizations largely control relief and distribution networks.

The concept of developing alternative relief mechanisms to provide safe and effective ways of servicing vulnerable populations that largely rely on terrorist organizations for assistance is compelling. It is also extraordinarily difficult to put into practice, and will require a strong partnership among elements of the national security, development, and charitable communities. One example of such a mechanism was a pilot project to establish an alternative relief mechanism for the Palestinian Territories. Launched in August 2008, the American Charities for Palestine (ACP) raised funds from U.S. donors to be delivered through channels approved by the U.S. Agency for International Development (USAID), in consultation with U.S. counter-terrorism authorities. There is clearly more work to be done in developing mechanisms such as this one and allowing them to reach their full potential.

IV. Conclusion

The Treasury Department has been charged by Congress and the President with a solemn responsibility to help identify, disrupt, and dismantle the networks that support terrorist organizations that threaten the lives of American citizens and the security of our nation. We are committed to employing all legitimate tools and authorities to meet this responsibility. And as President Obama said in Cairo, we firmly support the ability of Muslim Americans to fulfill their religious obligations through charitable giving. Moreover, we understand that there should be no contradiction between these twin goals—the involvement of the charitable and Muslim American communities is necessary in the struggle to combat abuse of the charitable sector by terrorist organizations. The Treasury Department has therefore sought to forge a partnership with

the charitable and Muslim American communities regarding the threats we face and the actions we are taking to combat these threats. We look forward to the continued development of this partnership.

Thank you for the opportunity to speak with you today. I would now be happy to answer any questions that you may have.



Written Statement Kay Guinane, Program Manager

Charity and Security Network

On

**Anti-Money Laundering: Blocking Terrorist Financing and Its
Impact on Lawful Charities**

Before the

Subcommittee on Oversight and Investigations

House Committee on Financial Services

May 26, 2010

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Introduction

I would like to begin by expressing my thanks to you, Chairman Moore, Ranking Member Biggert, and Members of the Subcommittee, for holding this hearing and inviting me to testify. This hearing is a critical first step in calling attention to an often overlooked and serious problem: barriers current national security laws and policies create for legitimate charitable, development, educational, grantmaking, peacebuilding, faith-based, human rights and similar organizations.

The Charity and Security Network is a project of OMB Watch, a government watchdog organization that seeks to increase government transparency and accountability; to ensure sound, equitable regulatory and budgetary processes and policies; and to protect and promote active citizen participation in our democracy. As Program Manger of the Network, I coordinate a diverse group of U.S. nonprofit organizations that seeks to address this problem through education and by proposing sensible, practical solutions that protect both national security and the people in need of our services and programs.

Today I will address the six questions listed in this committee's invitation to testify, and recommend some new directions we hope Congress will support. In this testimony I will use the term "charities" to refer to the large universe of aid, development, education, grantmaking, advocacy, faith-based and similar organizations.

Overview: The charitable sector condemns violence and works instead to eradicate poverty, promote democracy, peace, sustainability and human rights.

First, let me be very clear in stating that the charitable sector condemns terrorism and violence. We share the Department of Treasury's (Treasury) goal of dismantling terrorist financing networks and preventing resources, whether charitable or otherwise, from benefitting terrorist organizations, either directly or indirectly. Due to the nature of our work, the charitable sector is acutely aware of the dangers and challenges of working in conflict zones and areas where terrorist groups operate, and are constantly updating and adapting our due diligence efforts to address the threat of terrorism.

Snapshot of the U.S. Charitable and Philanthropic Sector

As of 2007, more than 1.64 million nonprofit organizations registered with the Internal Revenue Service (IRS),¹ employing 8.7 million workers, or approximately six percent of the U.S. labor force.² Public charities account for more than 900,000 of these groups.³ Nearly 600,000 of these

¹ Data on the number of tax-exempt organizations are from Internal Revenue Service Data Book 2007, Publication 55B (Internal Revenue Service, March 2008), table 25; available on the Internet at <http://www.irs.gov/taxstats/article/0,,id=168593,00.html>. Note that churches are not required to apply for tax-exempt status.

² Bureau of Labor Statistics, Wages in the Nonprofit Sector: Management, Professional, and Administrative Support Occupations (Oct. 28, 2008), available at <http://www.bls.gov/opub/cwc/cm20081022ar01p1.htm#revisionnote> (revised April 2009).

³ The Nonprofit Sector in Brief, Public Charities, Giving and Volunteering, 2009, The Urban Institute, online at <http://www.urban.org/uploadedpdf/412085-nonprofit-sector-brief.pdf>

groups have revenues over \$25,000 and must report annually to the Internal Revenue Service (IRS). In 2005, the latest year for which complete data are available, their revenue reached approximately \$1.6 trillion.⁴

Charities that are primarily engaged in international programs constitute only two percent of the U.S. nonprofit sector, and two percent of its total revenue. Three-quarters of these groups have annual revenue of less than \$500,000 per year. The vast majority of these groups provide direct services.⁵ The following chart shows the distribution of U.S. international charities:

Table 1: Activities of U.S. International Charities

Type of International Charity	Number of Groups	Revenue Spent
Direct services (including aid to individuals, technical assistance and training and institutional capacity building)	74%	89%
International understanding	16%	6.3%
International affairs	11%	4.8%

Source: The International Charitable Nonprofit Sector: Scope, Size and Revenue, Kerlin and Thanasombat, The Center on Nonprofits and Philanthropy Policy Brief No. 2, September 2006

In addition, private foundations support a wide array of charitable and educational programs. The Council on Foundations has over 2,000 members,⁶ and the Association of Small Foundations says the U.S. has over 60,000 small foundations, defined as those that are led entirely by volunteer boards or operated by just a few staff.⁷ Grantmakers Without Borders, a philanthropic network dedicated to increasing funding for international social justice and environmental sustainability and to improving the practice of international grantmaking, has 160 grantmaking members. All these organizations provide support and resources to their members, including ways to protect charitable assets for charitable purposes.⁸

The Charitable Sector's Mission and Work Counters Terrorism

The relatively small number of international charities and revenue does not reflect the enormous global impact and influence these groups have. Many charities work in conflict zones, politically unstable areas and communities suffering the effects of generations of severe poverty. Often they are the sole providers of vital services, such as healthcare, education and food programs.

⁴ Facts and Figures from the Nonprofit Almanac 2008: Public Charities, Giving, and Volunteering by Amy Blackwood, Kennard Wing, Thomas H. Pollak Online at <http://www.urban.org/publications/411664.html>

⁵ The International Charitable Nonprofit Sector: Scope, Size and Revenue, Kerlin and Thanasombat, The Center on Nonprofits and Philanthropy Policy Brief No. 2, September 2006

⁶ <http://www.cof.org>

⁷ <http://www.smallfoundations.org/>

⁸ <http://www.gwob.net>

But our work goes a step further. Overseas development and training programs enable grassroots partner organizations and their communities to build capacity to address future community needs, build local civil society and institutions and address grievances through non-violent means.

In effect, the work of the U.S. charitable sector confronts terrorism directly. This critical role has been recognized by Ambassador Daniel Benjamin, Director of the Coordinator for Counterterrorism at the Department of State.⁹ On January 13, 2010 in a presentation at the Cato Institute, he said,

“[T]here is probably no success in this area that can happen without civil society. So many of the societies we need to engage in it’s the NGOs that have the ground knowledge which is vitally important... It’s the NGOs that are politically palatable because there are many places, quite frankly, direct engagement would not be constructive....Many of us have made the argument that we need to always keep in sight that starvation is not going to help us with our counterterrorism equity...We need to confront the political, social, and economic conditions that our enemies exploit to win over the new recruits...’

Similarly, Secretary of State Hillary Clinton, in a December 14, 2009 speech at Georgetown University, explained that a wide focus on rights must address “desperation caused by poverty and disease often leads to violence that further imperils the rights of people and threatens the stability of governments.”¹⁰

This position is underscored by results of a 2006 public opinion survey conducted by Terror Free Tomorrow after the 2004 Indian Ocean tsunami, when tens of millions of dollars in U.S. humanitarian aid, both public and private, went to help victims.¹¹ They found that after the tsunami relief, 44 percent of respondents reported a favorable view of the U.S., compared to 15 percent in May 2003, before the tsunami.¹² During this time Indonesia reported the lowest level of support for Osama bin Laden and terrorism since 9/11. The results of a survey in Pakistan after the 2005 earthquake were the same; 75 percent of Pakistanis had a more favorable opinion of America, and most cited earthquake relief as the reason.¹³

The U.S. charitable sector is highly regulated, and protects its funds and resources to be used exclusively for charitable purposes

U.S. charities must apply to the IRS for recognition of tax-exempt status. If revenues exceed \$25,000 the organization must file a detailed information return (Form 990) each year with the

⁹ Daniel Benjamin, Director of the Coordinator for Counterterrorism at the Department of State, online at <http://www.cato.org/event.php?eventid=6807>

¹⁰ Hillary Rodham Clinton, Secretary of State, Georgetown University's Gaston Hall, Washington, DC, December 14, 2009, online at <http://www.state.gov/secretary/rm/2009a/12/133544.htm>

¹¹ http://www.internationaldonors.org/issues/pdf/tlp_exec-summary.pdf

¹² <http://www.terrorfreetomorrow.org/articlenav.php?id=82>

¹³ <http://www.terrorfreetomorrow.org/articlenav.php?id=5#top>

IRS.¹⁴ It requires that public charities disclose details of their foreign activities to the IRS, including grants and other assistance to organizations outside the United States.¹⁵

In addition, the IRS requires specific due diligence procedures when a U.S. charitable organization supports activities by foreign charities. For example, private foundations may support foreign organizations that have not been recognized by the IRS by undertaking a process known as “expenditure responsibility”¹⁶ or by making a good faith determination that the foreign entity is the equivalent of a U.S. public charity.¹⁷ To exercise expenditure responsibility, the foundation must:

- investigate potential grantees,
- execute a written agreement with specified terms prior to awarding the grant funds, and both receive and make regular reports concerning the use of the grant monies.¹⁸

A determination that a foreign charity is the equivalent of a U.S. charity can be based on an affidavit from the grantee or an opinion letter from either the foundation’s or the grantee’s counsel that the organization is the equivalent of a U.S. public charity.¹⁹ These documents must be detailed so that the IRS can determine the status of the grantee.²⁰ In addition, the foundation must confirm periodically review the situation to make sure the foreign grantee continues to qualify as a public charity.

The IRS requires public charities that provide support to foreign organizations to:

- conduct a review of the projects in advance to determine that they are in furtherance of its charitable purposes,
- monitor the foreign organization’s adherence to the U.S. charity’s goals²¹
- limit grants to specific projects that retaining control and discretion on how funds are used, and
- maintain records to establish that all grant funds were used for charitable purposes.²²

¹⁴ Or Form 990PF for private foundations

¹⁵ See IRS Form 990, Sch. F.

¹⁶ See IRC § 4945(h).

¹⁷ Treas. Reg. § 53.4945-6(c)(2)(ii); .

¹⁸ See Treas. Reg. § 53.4945-5(b) and (c).

¹⁹ Treas. Reg. § 53.4945-5(a)(5).

²⁰ *Id.*; see also Rev. Proc. 92-94, 1992-2 C.B. 507 (setting forth specific information that, if presented in such an affidavit, would sufficiently establish that the grantee organization would meet the section 501(c)(3) requirements), available at http://www.irs.gov/pub/irs-tege/rp_1992-94.pdf.

²¹ Rev. Rul. 66-79, 1966-1 C.B. 48.

²² See Rev. Rul. 68-489, 1968-2 C.B. 210.

1. The general impact that government efforts to stop the flow of money and support to terrorist organizations have had on charitable organizations following the events of September 11th.

General Structural and Procedural Problems

The embargo laws that underlie Treasury's enforcement regime are not well suited to the legitimate charitable sector. Economic sanctions programs under these laws apply to foreign nations, terrorist organizations, or criminal enterprises, and do not adapt well to legitimate charitable operations. There is no office in Treasury dedicated to safeguarding charitable programs in the way the Financial Crimes Enforcement Network (FinCEN) is designed to safeguard financial systems. Staff at the Office of Foreign Assets Control (OFAC) or the Office of Terrorism and Financial Intelligence (TFI) that I have encountered do not have experience or expertise in international charitable program operations. This has a negative impact on enforcement and undermines public confidence in Treasury's ability to determine when terrorist support actually occurs.

The designation and asset blocking process essentially turns Treasury into the prosecutor, judge, jury and executioner of a charity it suspects is supporting terrorism. Although Treasury issued a regulation in June 2003²³ that permits designated entities to seek administrative reconsideration after they have been designated and had their property frozen, the overall redress procedures are inadequate. There is no independent review, no requirement the charity even know why they are being investigated or designated, no timelines for Treasury to respond to requests for reconsideration, and inadequate opportunity to confront and present evidence.

Combined with a lack of transparency, this wide discretion opens the door to mistake and abuse. Although only nine U.S. charities have been designated, the lack of process for defending themselves and the indefinite freeze on their funds has made the rest of the U.S. charitable sector very aware of the dangers of being arbitrarily or erroneously shut down by Treasury.

Specific Problems Treasury's Enforcement Has Caused Legitimate U.S. Charities

A. Treasury enforcement ignores the humanitarian imperative

Treasury officials tell us their mission is to "disrupt and dismantle" terrorist financing flows. But their enforcement policy for charities has disrupted and dismantled humanitarian aid flows as well by freezing charitable funds and ignoring humanitarian considerations.

Humanitarian principles that guide charities are enshrined in documents such as the International Red Cross and Red Crescent Movement's *Principles of Conduct in Disaster Response Programmes*, which states that "Aid is given regardless of the race, creed or nationality of the recipients and without adverse distinction of any kind. Aid priorities are calculated on the basis of need alone."²⁴ It also says aid not be used to further a particular political or religious

²³ 31 CFR 501.807

²⁴ <http://www.icrc.org/web/eng/siteeng0.nsf/html/p1067>

standpoint or be used as an instrument of government foreign policy. (The ten principles in this code are attached in the Appendix.)

The Universal Declaration of Human Rights, adopted by the United Nations in 1948, guarantees rights of charities to “non-discrimination in delivery of services and benefits, including factors such as ethnicity, religion, opinion, national origin, or the political or international status of the nation to which a person belongs.” The Geneva Conventions (Article 2) also “establish an impartiality standard in that they grant to humanitarian organizations the right of access to non-combatants during armed conflict.”²⁵

Treasury enforcement policies for charities are at odds with these international and widely accepted standards. For example, the Geneva Conventions allow nonprofits to communicate with combatants when necessary to deliver aid to civilians. This is considered illegal by Treasury and could lead to the organization being shut down and have its assets frozen. Treasury’s overbroad interpretation of terrorist support is inconsistent with the principle that aid is not a weapon.

B. Use of the undefined “exploitation and abuse” standard

The phrase “exploitation and abuse” appeared in the Annex to the 2006 version of Treasury’s *Voluntary Anti-Terrorist Financing Guidelines for U.S. Charities* (Guidelines).²⁶ Treasury said that the risk of terrorist abuse “cannot be measured from the important but relatively narrow perspective of terrorist diversion of charitable funds...,” but also includes the “exploitation of charitable services and activities to radicalize vulnerable populations and cultivate support for terrorist organizations and networks.” These terms have not been adequately defined, and Treasury appears to include intangible, non-economic considerations outside the scope of the International Emergency Economic Powers Act (IEEPA).²⁷

In the first five years after 9/11 terrorist support was understood to be direct transfers of funds or goods. By introducing the exploitation and abuse standard in the Annex to voluntary guidance, Treasury significantly expanded the universe of prohibited conduct without Congressional review, public comment or adequate definition. Now Treasury appears to interpret “material support” to include legitimate charitable aid that may “otherwise cultivate support” for a designated organization. This is so broad that it could include inadvertent and indirect support, such as members of a terrorist group advertising aid distribution without the knowledge of the charity.

This makes it increasingly difficult for charities and foundations to predict what constitutes illegal behavior. Consequently, the U.S. nonprofit community operates in fear of what may spark OFAC to use its power to shut them down.

²⁵ Geneva Conventions, Common Article 3, <http://www.nytimes.com/ref/us/AP-Guantanamo-Geneva-Conventions.html> (5 May 2009)

²⁶ U.S. Dept. of the Treasury, *U.S. Department of the Treasury Anti-Terrorist Financing Guidelines: Voluntary Best Practices for U.S. Based Charities*, 2006 version, Annex pp. 14-16. Available at <http://www.treas.gov/press/releases/reports/0929%20finalrevised.pdf><http://www.treas.gov/press/releases/reports/0929%20finalrevised.pdf>

²⁷ 50 USC 1601 et. seq.

Charities are well aware of the problem of abuse by terrorist organizations, since violence against aid workers has increased dramatically since 9/11. In 2008, 260 humanitarian aid workers were killed, kidnapped or seriously injured in violent attacks. This toll is the highest in the 12 years of the Center of International Cooperation and the Overseas Development Institute began tracking these incidents.²⁸

The situation has gotten so bad that the Program on Humanitarian Law and Conflict Research at Harvard University conducted webinar training for aid workers on May 11, 2010 titled, "How to Survive a Kidnapping."²⁹ In addition, InterAction's Security Advisory Group has published guidelines for aid and development organizations to assess their security risks and identify mitigation measures.³⁰

C. Frozen funds

IEEPA allows Treasury to block, or freeze, the funds and assets of organizations it designates or, in some cases, pending investigation into designation.³¹ The law does not provide any timeline or process for long-term disposition of frozen funds, so they could remain frozen for as long as the root national emergency authorizing the sanctions lasts. Since the "war on terror" is very unlikely to have a clear ending, the funds of designated charities could remain frozen indefinitely.

Treasury regulations give it the power to grant specific licenses to designated organizations that would allow transferring the funds to legitimate charities for charitable purposes. Several U.S.-based charities that have been shut down by Treasury have requested that some or all of their assets be transferred this way. However, Treasury has rejected every request. For example:

- In 2002, Treasury denied Benevolence International Foundation (BIF) a license to release funds to a children's hospital in Tajikistan and the Charity Women's Hospital in Dagestan, even though the application included safeguards to ensure the money arrived at the proper destination.
- The Islamic American Relief Agency (IARA-USA) made repeated requests over a two-year period for release of funds for humanitarian and disaster aid, including assistance for victims of Hurricane Katrina and earthquake victims in Pakistan. These requests included offers to change their governance structure, financial accounting, and even personnel, in order to assure Treasury that no funds would be diverted to terrorism.
- In 2006, KindHearts for Charitable Humanitarian Development asked its funds be released and spent by the USAID Program or any other humanitarian program, asking only that "special consideration be given to the refugees in the earthquake ravaged areas

²⁸ Providing aid in insecure environments:2009 Update Trends in violence against aid workers and the operational response HPG Policy Brief 34 Humanitarian Policy Group April 2009, Online at http://www.cic.nyu.edu/Lead%20Page%20PDF/HPG_2009%20.pdf

²⁹ <http://www.hpcrresearch.org/events/security-mission-how-survive-kidnapping>

³⁰ <http://www.eisf.eu/resources/library/SRM.pdf>

³¹ 50 USC 1702(b)

of Pakistan since the overwhelming majority of frozen funds were earmarked for projects therein.” The application was denied.

Treasury has repeatedly said that allowing transfers for humanitarian and disaster aid is not in the national interest, without explaining how or why.³² It also says Congress intended that all frozen funds be held in case victims of terrorism or their families file suit and obtain judgments under the Terrorism Risk Insurance Act (TRIA).³³ Section 201 of the act allows blocked assets to be used to pay judgments from litigation “against a terrorist party.” However TRIA does not authorize funds to be held where no lawsuits have been filed or judgments rendered. Only one of the designated organizations, the Holy Land Foundation, has been brought into civil litigation by victims of terrorism.

The consequence of Treasury’s policy is that people in need are doing without. Although there is no public information on how many charitable dollars have been frozen, it appears that at least \$7 million in assets from U.S. charities is at stake. To illustrate the impact these funds could have if released, I have used data from UNICEF, the United Nations Children’s Fund founded in 1946. UNICEF publishes a chart³⁴ that outlines how many children could be helped with small donations. For example, \$25 will provide basic health supplies for 41 children.

Based on that release of \$ 7 million in frozen funds would assist needy children as follows:

- 11,480,000 children could receive basic health supplies
- 12,180,000 children could be vaccinated against polio
- 25,900,000 severely malnourished children could get ready-to-eat nut spread
- 9,549 families could get tents

Congress can remedy this situation by making it clear to Treasury that charitable funds should be protected for charitable purposes.

The process of freezing funds is problematic. Section 10 of Executive Order 13224 states that no prior notice of designation needs to be provided to U.S. organizations before funds are frozen “because of the targeted organization’s ability to transfer funds or assets instantaneously, which would render the blocking measures ineffectual.”³⁵ Treasury has made a blanket assumption that this danger exists in all designations of charities, when it could use less drastic measures that would ensure legitimate charitable programs can continue.

This problem was addressed by the court in the KindHearts case, where the court said “law enforcement must have an objective, factual basis to believe that “the loss or destruction of evidence is imminent.”³⁶ The court ruled that Treasury must demonstrate facts to support its belief that funds are in danger of transfer as part of showing probable cause to obtain a warrant

³² OMB Watch review of correspondence between Treasury and three designated U.S. nonprofits.

³³ 107 P.L. 297, § 201.

³⁴ <http://volunteers.unicefusa.org/activities/fundraise/>

³⁵ Executive Order 13224 issued by President George W. Bush on Sept. 23, 2001, online at <http://www.fas.org/irp/offdocs/eo/eo-13224.htm>

³⁶ *KindHearts for Charitable Humanitarian Development v. Geithner, et. al* United States District Court for the Northern District of Ohio, Western Division Case No. 3:08CV2400 p. 30, opinion

authorizing the seizure/freezing of the funds. This process could be the basis for new procedures dealing with frozen charitable funds.

D. Lack of proportionality

Treasury's approach to enforcement fails to differentiate between acts undertaken by an organization and those undertaken by employees or others acting outside the scope of their authority and without the knowledge or consent of the governing body. Research suggests that Treasury's policy of shutting down entire charities, rather than sanctioning individuals within the institution that are guilty of wrongdoing, is overly harsh and misguided. For example, a 2004 report *Terrorism and Money Laundering: Illegal Purposes and Activities*³⁷ reviewed the facts surrounding the shut down U.S. charities and found problems typically occurred when an individual acted out of ideological or criminal motivation. Small-scale violations by rogue individuals were primarily to blame when diversion for non-charitable purposes occurred.

Treasury's response, the complete shutting down of organizations and freezing of their funds, is disproportionate to this type of situation. A better approach is reflected in its treatment of for-profit entities such as Chiquita Banana.

Between 1997 and 2004 Chiquita Brands International paid approximately \$1.7 million to the United Self-Defense Forces of Colombia (AUC) and the leftist Revolutionary Armed Forces of Colombia (FARC), both designated terrorist organizations, for protection in a dangerous region of Colombia. Instead of designating Chiquita and freezing its assets, the Department of Justice put three of its officers under investigation. No criminal charges were filed, but on March 14, 2007, Chiquita agreed to pay a \$25 million fine.

On April 24, 2003, a board member of Chiquita disclosed to Michael Chertoff, then assistant Attorney General, Chiquita's clear violation of anti-terrorism laws. Allegedly, Chertoff told the Chiquita representatives that the activity was illegal, but they should wait for more feedback. Three of Chiquita's officers were then placed under investigation by the Justice Department for authorizing and approving the payments, but in September 2007, the investigation ended without any criminal charges.³⁸

E. Flawed assumptions

After 9/11 and through early 2009, Treasury justified the negative impacts anti-terrorist financing enforcement has had on charities by claiming the sector is a "significant source of terrorist financing."³⁹ The *Guidelines* allege its investigations "revealed terrorist abuse of charitable

³⁷ Victoria Bjorklund, Jennifer I. Reynoso, and Abbey Hazlett, "Terrorism and Money-Laundering": Illegal Purposes and Activities," September 19, 2004, paper delivered for National Center on Philanthropy and the Law. Available at <http://digitalcommons.pace.edu/cgi/viewcontent.cgi?article=1032&context=lawrev>.

³⁸ "Chiquita agrees to fine for paying terrorists," *USA Today* (March 14, 2007). http://www.usatoday.com/money/industries/food/2007-03-14-chiquita-terrorists_N.htm. "In Terrorism-Law Case, Chiquita Points to U.S.," *Washington Post* (Aug. 2, 2007). <http://www.washingtonpost.com/wp-dyn/content/article/2007/08/01/AR2007080102601.html?hpid=topnews..> "Ex-Chiquita Execs Won't Face Bribe Charges," *Washington Post* (Aug. 12, 2007). "Chiquita fined for Colombia payments," *Los Angeles Times* (Sept. 18, 2007).

³⁹ U.S. Department of the Treasury, "Screening Tax-Exempt Organizations Filing Information Provides Minimal Assurance That Potential Terrorist-Related Activities Are Identified," May 21, 2007. Available at

organizations, both in the U.S. and worldwide, often through the diversion of donations intended for humanitarian purposes but funneled instead to terrorists, their support networks, and their operations.”⁴⁰ The charitable sector has made repeated requests for specifics so that it could be better informed about what kinds of situations to avoid. Treasury has only referenced open source media reports and its website,⁴¹ which only provide general information.

Treasury data shows that the charitable sector, especially U.S. charities, is not a significant source of terrorist financing. For example, U.S. charities account for only 1.68 percent of all SDGTs. See Table 2 below.

Table 2: Charities & Individuals Associated with Charities on OFAC’s 2009 SDN List

Charities & Individuals Associated With Charities (77, including 48 charities & 29 individuals)	10.69%
All Charities: (48 listed on OFAC list)	9.0%
Individuals Associated With Charities: (29 listed on OFAC list- no updated data available)	5.4%
Foreign Charities: (39 listed on OFAC list)	7.3%
U.S. Based Charities: (9 listed on OFAC list)*	1.68%

(Of approximately 530 entities listed on the September 2009 OFAC list)

The Staff Monograph to the 9/11 Commission “revealed no substantial source of domestic financial support” for the 9/11 attacks.”⁴² The report cautions that “[i]n many cases, we can plainly see that certain nongovernmental organizations (NGOs) or individuals who raise money for Islamic causes espouse an extremist ideology and are “linked” to terrorists through common acquaintances, group affiliations, historic relationships, phone communications, or other such contacts. Although sufficient to whet the appetite for action, these suspicious links do not demonstrate that the NGO or individual actually funds terrorists and thus provide frail support for disruptive action, either in the United States or abroad.”⁴³

Treasury has also promoted an overly simplistic theory of “dual purpose charities” that ignores differences between front organizations, social service wings of terrorist groups and those that may be infiltrated by terrorist sympathizers.

<http://www.treas.gov/tigta/auditreports/2007reports/200710082fr.pdf>. The May 2007 report states: “a significant source of terrorist support has been the use of charities and nonprofit organizations...” Also citing the Treasury Guidelines

⁴⁰ U.S. Department of the Treasury, “U.S. Department of the Treasury Anti-Terrorist Financing Guidelines: Voluntary Best Practices for U.S. Based Charities,” December 2005, pp. 2-3.

⁴¹ U.S. Department of the Treasury, webpage section on terrorism and financial intelligence. See <http://www.treas.gov/offices/enforcement/key-issues/protecting/index.shtml>, Anti-terrorist Financing Guidelines, Annex at p. 14-16.

⁴² Terrorist Financing Staff Monograph to the 9/11 Commission National Commission on Terrorist Attacks Upon the United States, p. 3 (2004). Available at http://www.9-11commission.gov/staff_statements/911_TerrFin_Monograph.pdf.

⁴³ *Ibid*, at 9

This theory was described on May 20, 2007 in a hearing before the Senate Homeland Security and Governmental Affairs Committee on the topic “Violent Islamist Extremism: Government Efforts to Defeat It.” Chip Poncy, the Director of Treasury’s Office of Strategic Policy, for Terrorist Financing and Financial Crimes, testified that Treasury considers an entire organization to be a supporter of terrorism if any aspect of an organization is engaged in terrorist support. Poncy acknowledged that this “raises operational issues as to whether or not Treasury can look at minimalizing collateral damage.” However, Treasury has not taken any steps to minimize collateral damage.

2. Steps charitable organizations have proactively taken to prevent their resources from being used to benefit designated terrorist organizations.

To ensure charitable resources are used only for charitable purposes, the U.S. charitable sector has proactively taken steps to address the unique threat terrorism poses to charitable programs. Since 9/11, guides and programs have been created that provide responsible practices to protect charitable and philanthropic activities from terrorist diversion. These include the Treasury Guidelines Working Group’s *Principles of International Philanthropy*⁴⁴ and the Council on Foundations and Independent Sector’s *Handbook on Counter-Terrorism Measures: What U.S. Nonprofits and Grantmakers Need to Know*.⁴⁵

In addition, United States International Grantmaking, a project of the Council on Foundations and the International Center for Not-For-Profit Law “facilitates effective and responsible international grantmaking by U.S. foundations.” It sponsors a website⁴⁶ with information on international grantmaking basics, legal issues, accounting and information on global disasters response.

In August 2008 Muslim Advocates launched the Muslim Charities Accreditation Program. It “is designed to enhance the knowledge and ability of nonprofit leaders to meet the demands of governance, legal and financial compliance.”⁴⁷ The program is a partnership with the Better Business Bureau’s Wise Giving Alliance, a charity evaluation program that also promotes nonprofit best practices. Muslim Advocates educates nonprofit leaders about the BBB-WGA Standards for Charity Accountability, assists them with evaluation by BBB-WGA and provides technical training, free expert assistance, and professional evaluation of legal and financial records.

Additional examples of due diligence, standards and best practices resources generated and used by the U.S. charitable sector include:

- *InterAction’s Private Voluntary Organization Standards*, which define “the financial, operational, and ethical code of conduct for InterAction and its member

⁴⁴ Treasury Guidelines Working Group, March 2005, online at http://www.usig.org/PDFs/Principles_Final.pdf

⁴⁵ *Handbook on Counter-Terrorism Measures: What U.S. Nonprofits and Grantmakers Need to Know*, Independent Sector, Council of Foundations, InterAction, Day Berry & Howard Foundation (2004).

⁴⁶ <http://www.usig.org/>

⁴⁷ <http://www.muslimadvocates.org/charities/main.html>

agencies.”⁴⁸ With more the 180 members, InterAction is the largest coalition of U.S.-based international nongovernmental organizations (NGOs).

- *Humanitarian Accountability Partnership*,⁴⁹ (HAP) founded in 2003, “certifies those members that comply with the HAP Standard in Humanitarian Accountability and Quality Management, providing assurance to disaster survivors, staff, volunteers, host authorities and donors that the agency will deliver the best humanitarian service possible in each situation.”
- Transparency International’s (TI) *Preventing Corruption in Humanitarian Operations” Handbook of Good Practices*⁵⁰ which “includes ways to track resources, confront extortion and detect aid diversion. The handbook, part of TI’s broader work to stop corruption in humanitarian assistance, covers policies and procedures for transparency, integrity and accountability, and specific corruption risks, such as supply chain management and accounting.”

What does this due diligence look like in practice? U.S. charities adopt appropriate risk procedures appropriate to the organization’s mission and circumstances. The methods used will depend on a variety of factors, including the location of the program, cultural factors, local financial systems, the relationship the government and civil society, including the regulatory structure and level of independence from government interference in civil society, logistical barriers and urgency, such as responding to a natural disaster.

The many possible methods of due diligence include:

- Advance investigation of grantees and local partners to ensure they are qualified to carry out the funded programs and activities
- Written agreement that specifies terms for use of grant funds
- Regular reports on use of grant monies⁵¹
- Ongoing monitoring of the grantee’s progress in carrying out funded programs and activities, through site visits or other means
- Require the grantee to maintain records to show all grant funds used for charitable purposes⁵²

⁴⁸ <http://www.interaction.org/document/interactions-pvo-standards>

⁴⁹ <http://www.hapinternational.org/>

⁵⁰ The Feinstein International Center (FIC) of Tufts University, the Humanitarian Policy Group (HPG) of the Overseas Development Institute, and TI in collaboration with seven leading international non-governmental humanitarian organisations: Action Aid, CARE International, Catholic Relief Services, Islamic Relief Worldwide, Lutheran World Federation, Save the Children USA and World Vision International.

http://www.transparency.org/news_room/in_focus/2010/hum_handbook

⁵¹ Treas. Reg. 53.4945—5(b) and (c)

⁵² Rev. Rul. 68-489, 1968-2 C.B. 210

- Work in cooperation or consultation with other organizations that are familiar with the region and the local charity, such as the International Committee of the Red Cross Red Crescent, or one of its affiliated organizations, including the American Red Cross
- Obtain referrals for local implementing partners from reputable nonprofit organizations operating in the region
- Provide capacity building training to local partners
- Check U.S. watch lists on local partners

In the final analysis, this is a people to people business. Good accounting and management practices are not enough to ensure charitable resources are used appropriately. That is why charities ensure that their missions are successful and guard against cooption of charitable funds and services for illicit purposes by cultivating relationships of trust with donor and recipient communities. In our sector this is referred to as “knowing your grantee.”

3. Government efforts to block terrorism financing and support have made charitable work difficult internationally

A. Discouraging International Programs

The most counterproductive impact Treasury’s enforcement practices have had on legitimate charities is that it has discouraged U.S. charities from pursuing international humanitarian, development and peacebuilding work. This has been particularly true in areas where Specially Designated Global Terrorists (SDGTs) control territory and are also impacted by natural disaster, famine or other emergencies. It also makes communications intended to bring an end to violent conflict impossible.

There are few studies that document these trends, as it is difficult to measure the absence of programs. However, some data from the Foundation Center provides an indication of the trend that supports anecdotal evidence. For example, between 1998 and 2001 international grants targeting overseas recipients dropped from almost 40 percent in 1998 to 31 percent⁵³ and dropped again between 2002 and 2004.⁵⁴ Although it appears to rebound in 2006, accounting for almost 45 percent of all international grants, 60.1 percent went to grantees in Switzerland, England, and Kenya. The study Collateral Damage said, “This suggests many grants were given to intermediaries for regranting or to western-based organizations in the developing world.

⁵³ International Grantmaking Update, Foundation Center, October 2003, at <http://foundationcenter.org/gainknowledge/research/pdf/intlupdt.pdf>.

⁵⁴ International Grantmaking Update, Foundation Center, October 2006, at <http://foundationcenter.org/gainknowledge/research/nationaltrends.html>.

Likely only a minority of cross-border grants went to grassroots organizations in the developing world.”⁵⁵

A survey by the Foundation Center in 2004 survey found a majority of respondents agreed that international funding is more difficult due to “the more demanding and uncertain regulatory environment” and “increased security risks abroad.”⁵⁶ A study published by *Alliance* magazine in 2003 found that counterterrorism measures create practical problems for program operations and organizational anxiety about the draconian consequences of non-compliance. Organizations interviewed expressed concern for the future of international grantmaking because of the unpredictability of counterterrorism enforcement, saying inexperienced grantmakers “will [be] frighten[ed] away ... think[ing] that it is not worth the effort.”⁵⁷

This effect of this fear was illustrated in a 2003 *New York Times* article, “Small Charities Abroad Feel Pinch of U.S. War on Terror,” that described how the Rockefeller Philanthropy Advisors suspended funding for a Caribbean program designed to “kick-start a flow of American charity” to poverty stricken areas. Treasury’s Guidelines were cited as the reason. Eileen Growald, Rockefeller Philanthropy’s chairwoman, stated that “[i]f these guidelines become the de facto standard of best practices for giving abroad, we might very well have to stop making grants outside the United States.”⁵⁸ Later in the article, Robin Krause of the law firm Patterson, Belknap, Webb & Tyler noted, “If a donor can choose between three programs, he’s likely to choose the least risky one, and right now that’s not an international one.”

B. Failure of OFAC to publicly list all organizations it considers illegal for U.S. charities to deal with as a SDGT

Treasury promotes checking the SDGT list as a primary method of compliance with anti-terrorist financing laws, but does not list all the groups charities are expected to avoid. This came to light during the criminal trial of the Holy Land Foundation (HLF). In that case the defense argued HLF’s program was legal because they delivered aid through zakat (charity) committees that were not on the SDGT list. However, OFAC official Robert McBrien told the jury that designation is not necessary and that keeping up with front groups “is a task beyond the wise use of resources.” Instead, he said OFAC targets umbrella groups.⁵⁹

OFAC’s position essentially forces charities to guess whether any particular group is on OFAC’s non-public, secret list. Uneven enforcement adds to the confusion, since, the same zakat committees HLF funded also received aid from the U.S. Agency for International Development (USAID) and International Red Cross, and they were not prosecuted.⁶⁰

⁵⁵ *Collateral Damage: How the War on Terror Hurts Charities, Foundations, and the People They Serve* by Grantmakers Without Borders and OMB Watch, June 2008, online at <http://www.ombwatch.org/node/3727>

⁵⁶ *Ibid.*

⁵⁷ Rachel Humphrey, “Alliance Extra – June 2003. *Alliance* (June 2003). Online at <http://www.allavida.org/alliance/axjune03a.html>.

⁵⁸ Stephanie Strom, “Small Charities Abroad Feel Pinch of U.S. War on Terror,” *The New York Times*, (Aug. 5, 2003).

⁵⁹ <http://www.ombwatch.org/node/3849>

⁶⁰ <http://www.alternet.org/module/printversion/108740>

C. OFAC's licensing process is slow, inconsistent and politicized.

Under Treasury regulations, charities wishing to provide aid in areas subject to IEEPA sanctions or where listed groups may inevitably be involved must request a specific license to OFAC, which has absolute discretion in granting or denying such licenses. There are no criteria, no deadlines for making a decision, and no appeal if the application is denied.

Specific license applicants must submit the names of all parties "concerned with or interested in" the proposed transaction and "any further information as is deemed necessary."⁶¹ OFAC can place conditions on a license or "exclude any person, property, or transaction from the operation of any license."⁶² OFAC can impose reporting requirements "in such form and at such times and places" as it wishes,⁶³ maintains control of the licensee's activities and has discretionary power to amend or cancel it.

There are widespread complaints from operating charities that the licensing process is plagued by delays, unexplained denials, lack of standards and timetables. They say this is particularly problematic in disaster response situations, making their response much less effective. In addition, the State Department directs many of OFAC's charitable license decisions, which causes delays and subjects charitable programs to government foreign policy. This violates the separation between the voluntary sector and government, politicizing private philanthropy. In addition, charities seeking to ship bulk goods for aid must get licenses from the Commerce Department, which is similarly beset with delays and unexplained denials.

4. The communication and coordination process between the Treasury Department and the charitable organizations community is problematic.

While Treasury officials have made efforts to reach out to the charitable sector by speaking at events and meeting with charities, these efforts have not been productive. There continues to be substantial disagreement about the nature of the problem and the proper way to address it.

At the May 2007 Senate Homeland Security and Governmental Affairs Committee, Poncy characterized Treasury's relationship with the charitable sector as a "close" relationship involving "extensive consultation." This characterization ignores the fact that the charitable sector has consistently and clearly asked for the withdrawal of the Guidelines. The ongoing discussions between Treasury officials and the Treasury Guidelines Working Group, which is comprised of a broad cross section of U.S. charitable organizations and experts have not brought Treasury and the charitable community to agreement on a common understanding of the nature of charitable operations or provided clarity about how Treasury defines the problem. I posted a summary of such a meeting online⁶⁴ to provide the sector with a snapshot of the issues. It

⁶¹ 31 C.F.R. 501.801(b)(3).

⁶² 31 C.F.R. 501.597.502.

⁶³ 31 C.F.R. 501.801(b)(5).

⁶⁴ http://www.charityandsecurity.org/analysis/emerging_issues_US_counterterrorism_regime Sept. 22, 2008 conference call between the Treasury Guidelines Working Group (TGWG) and officials of Treasury's Office of Terrorism and Financial Intelligence.

covered the current nature of the terrorist threat to charities, the extent to which charities are conducting risk assessments and consulting terrorist lists and relief operations in high risk areas of the world.

The discussion revealed problems with:

- Treasury’s broad and vague definition of the nature of the threat
- Treasury’s legal authority to regulate “exploitation” and “abuse” under economic sanctions laws,
- Treasury’s new “alternative delivery system” initiative
- the lack of humanitarian principles not incorporated into Treasury’s idea of risk assessment
- lack of clarity and due process in Treasury’s designation process

The “alternative delivery system” is an arrangement between Treasury, USAID and American Charities for Palestine (ACP) that provides an alternative route for delivery of services for nonprofits working in conflict zones. It is structured to give USAID authority over private charitable donations, which is inconsistent with the basic principle that the charitable sector is independent of government. The U.S. charitable community has opposed this structure as a solution to the problems of delivering aid in conflict zones.

In some cases Treasury has failed to respond to requests for meetings, particularly on the issue of frozen funds. For example, in November 2006 a group of nonprofits sent Treasury a letter asking it to release frozen funds belonging to charities or foundations designated as supporters of terrorism “to trustworthy aid agencies that can ensure the funds are used for their intended charitable purposes.”⁶⁵ The signatories requested a meeting with Treasury officials to discuss the proposal in more detail. The letter’s organizational signers include the Council on Foundations, Grantmakers Without Borders, Independent Sector, Global Fund for Women, the Muslim Public Affairs Council, and OMB Watch.

There was no response until Rep. Jose Serrano’s office asked Treasury to meet with the group. At the January 15, 2008 meeting representatives of the charities proposed a process for releasing the funds. Treasury’s response was inconclusive and it took no further action. During the meeting, Treasury was given a list of questions regarding the status of frozen charitable funds but never responded.

In July 2009 members of the Charity and Security Network met with David S. Cohen, the newly appointed Assistant Secretary for Terrorist Financing. The problem of frozen funds was discussed at that meeting, and Cohen agreed to a follow up meeting that would also include representatives of the Department of Justice. After receiving no response to emails requesting

⁶⁵ See Letter to Henry Paulson, Secretary of the U.S. Department of Treasury. Available at http://www.ombwatch.org/npadv/Paulson_letter.pdf.

date for a follow up meeting, I wrote to Assistant Secretary Cohen in February requesting a date. In April I received a letter from Poncy summarizing Treasury's position on frozen funds, expressing willingness to meet but not proposing a meeting date.

5. The anti-terrorist financing guidelines issued by the Department of Treasury are not useful to charitable organizations.

In November 2002, Treasury released the *Anti-Terrorist Financing Guidelines: Voluntary Best Practices for U.S.-Based Charities* (Guidelines)⁶⁶ without public comment or input. It included suggested governance, transparency, financial, and grantmaking practices. The Guidelines were widely criticized by the charitable sector for suggesting practices did not reduce the risk of diversion of charitable assets to terrorists and placed charities and foundations in a government investigator role.

In a 2003 article "How the War on Terror Hits Charity"⁶⁷ William P. Fuller and Barnett F. Baron of the Asia Foundation summed up the general complaints against the Guidelines, saying "The voluntary guidelines contain too many vague and undefined terms that leave grantmakers vulnerable to legal action ... [p]erhaps most important, the new requirements risk undermining cooperative relationships between organizations and their overseas partners ... destroy[ing] relationships of trust and the ability of US foundations to operate freely and effectively."

In May 2003, the IRS sought public comments on ways U.S. charities and foundations might prevent the diversion of charitable assets to terrorists.⁶⁸ In April 2004, Treasury invited organizations that submitted comments to the IRS to meet and discuss potential revisions. Meeting participants established the Treasury Guidelines Working Group, which developed the *Principles of International Charity*⁶⁹ as an alternative to the Guidelines in March 2005. The Principles are designed to more "accurately reflect the diversity of due diligence procedures that effectively minimize the risk of diversion of charitable assets,"⁷⁰ recognizing that there is no one set of procedures for safeguarding charitable assets against diversion to terrorists. However, rather than adopting these principles, Treasury published a revised version of the Guidelines in September 2006.⁷¹ Although there were some improvements, the fundamental problems remain.

The primary problem with the Guidelines is that compliance provides no legal protection against being shut down and having assets frozen. In addition, they promote problematic procedures, such as:

- Organizations are asked to check "key employees, members of the governing board, or other senior management" and "assure itself that grantees do not appear on OFAC's

⁶⁶ http://www.treas.gov/offices/enforcement/key-issues/protecting/docs/guidelines_charities.pdf

⁶⁷ William P. Fuller and Barnett F. Baron, "How the war on terror hits charity," *The Christian Science Monitor* (July 29, 2003) as seen at www.csmonitor.com/2003/0729/p11s01-coop.htm.

⁶⁸ <http://www.irs.gov/pub/irs-drop/a-03-29.pdf>

⁶⁹ http://www.usig.org/PDFs/Principles_Final.pdf

⁷⁰ *Ibid.*

⁷¹ For a comparison of the 2005 draft and 2006 Guidelines, see <http://www.ombwatch.org/npadv/TreasGuidelinesSidebySide06.pdf>.

master list of Specially Designated Nationals (the SDN List).” Many charities have objected to this process because of flaws in the listing process and the vagueness and breadth of who should be checked against the list. The Guidelines offer no alternatives to list checking and do not acknowledge circumstances when list checking is not necessary, such as when a grantee is well known to the grantmaker.

- The Guidelines promote anti-terrorism certification statements to be signed by grantees and foreign partner organizations. One study found that foundations program officers viewed the certification language as “useless and embarrassing, damaging trust in their work with the very groups that could make a difference in improving the conditions that lead to terrorism.”⁷²
- The voluntary nature of the Guidelines is questionable, given the broad powers Treasury has under the Patriot Act and Executive Order 13224 to seize and freeze charitable assets.
- The Guidelines continue to take a one-size-fits-all approach.
- There are no safe harbor procedures, opportunities to cure problems, and intermediate sanctions that allow charitable programs to continue to serve their intended beneficiaries.
- The guidelines can make funders risk averse, at the cost of programs that reach out to vulnerable populations and address the political and economic hardships at the root of terrorism.
- The sections which address governance and transparency are outside OFAC’s area of expertise, and are not relevant to the goal of preventing diversion of funds to terrorists.
- The Guidelines are being used by other regulatory agencies in ways that conflict with their supposed voluntary nature.
- The proposed increase in vetting procedures “suggest that charitable organizations run a gauntlet of information collection and reporting procedures that exceed due diligence practices which are routinely followed by organizations and which have, to our knowledge, proved adequate to prevent the unintentional diversion of assets to terrorist uses.” These provisions threaten the safety of humanitarian workers “who may be targeted as a result of their perceived lack of independence from the government.”

In December 2006 the Council of Foundations sent a letter⁷³ to then Treasury Secretary Henry Paulson on behalf of the Treasury Guidelines Working Group asking for withdrawal of the

⁷² Georgetown Public Policy Institute’s Center for Public & Nonprofit Leadership Presents “Safeguarding Charity in the War on Terror” (June 14, 2005), citing Terry Odendahl, the 2004-2005 Neilson Chair on Philanthropy at the Georgetown Public Policy Institute, conducted a survey on programmatic changes within foundations due to the Guidelines.

⁷³ http://www.cof.org/files/Documents/International_Programs/TreasuryLetter.pdf

Guidelines. The letter states, “the Guidelines significantly exaggerate the extent to which U.S. charities have served as a source of terrorist funding.” Additional problems cited include:

- The administrative burden of information collection and reporting requirements results in less time that can be spent for program activities.
- The Guidelines are set as voluntary by the Treasury Department, but “Members of the Working Group are also aware that IRS agents--both in the context of audits and exemption applications--have questioned organizations about their compliance with the Guidelines. If the Guidelines are voluntary, they should not become a criterion for evaluating tax-exempt status.”

In April 2010 the same working group again wrote to Treasury seeking withdrawal of the Guidelines. We are waiting for a response.

6. Suggestions on how to improve this process or the guidelines for charities issued by the Treasury Department

The U.S. charitable sector has been working on practical, sensible proposals to fix these problems. We will be happy to meet with you, Department of Treasury and the administration to share these ideas and discuss ways to achieve the common goals of charity and security. Our Principles to Guide Reform are attached to this testimony.

Changes are needed in the areas of transparency, accountability, proportionality and humanity.

A. Transparency

Improved transparency will benefit national security and legitimate U.S. charities by minimizing the risk of mistake or abuse in enforcement, facilitating oversight and better informing the regulated community. The following steps toward transparency are recommended:

- Create clear standards of what is and is not allowed
- Allow charities to defend themselves before an independent ombudsman, including the right to adequate notice, legal representation and confront and present evidence.
- Provide the public with explanations of the specific reasons for the shutting down of charities, so the charitable community can determine standards from Treasury practices
- Let the public know the amount and status of frozen charitable funds and seized goods.
- Establish clear standards and timelines for the licensing process

B. Accountability

This hearing an important step toward accountability, and I hope it is the beginning of an ongoing effort to address the issues raised. Congress should follow up on this hearing with concrete recommendations to Treasury and require them to report their progress.

There are some specific areas where Treasury should be held accountable and explain how it will address the problems described today. These include:

- How it will avoid repetition of losing KindHearts 1300+ page filing and its failure to respond to requests for reconsideration in a timely manner
- Refusing to release charitable funds without adequate justification
- Plans to correct constitutional defects in its designation procedures
- What steps it will take to be timely in response to requests from the affected charitable community to meet to discuss proposals for reform (i.e. frozen funds requests)
- Improve processing of license applications

C. Proportionality

In military operations the Department of Defense employs tactics designed to avoid civilian casualties. In anti-terrorist financing programs, Treasury fails to take similar care, leading to blocked aid for civilians overseas.

In fact, Treasury has said this ‘collateral damage’ is something Congress indicated it was willing to accept by writing the law the way it did.⁷⁴ Congress should make it clear to Treasury that this is not the intended outcome of IEEPA, and encourage the agency to take a more proportional approach to enforcement.

In fact, IEEPA already provides Treasury with the authority to employ less drastic remedies. It allows the President to “investigate, regulate, or prohibit” a host of financial transactions by means of regulations, licenses, instructions or other means.⁷⁵ In addition, IEEPA allows for “investigation, block during the pendency of an investigation, regulate, direct and compel, nullify, void, prevent or prohibit” any transactions relating to property held by the designated foreign country or national.⁷⁶ These powers do not require freezing assets, and would allow for alternative approaches that correct improper transactions or procedures in otherwise law-abiding organizations. Instead:

- Congress should encourage Treasury to use intermediate sanctions and less drastic measures than designation and freezing funds, in a manner similar to treatment of entities like Chiquita Brands International.
- Treasury should distinguish between bad acts of individuals inside charities and bad faith conduct of the charity itself when considering sanctions. It should also distinguish between inadvertent errors and intentional diversion of funds.
- Treasury should recognize that U.S. organizations are highly regulated by IRS and state authorities, and take compliance into account.

⁷⁴ Chip Poncy, presentation at Pace Law Review Symposium, "Anti-Terrorist Financing Guidelines: The Impact on International Philanthropy" December 2004, summary online at http://www.charityandsecurity.org/background/Pace_Law1_Symposium_Summary_Impact_Charities_AntiTerrorist_Guidelines

⁷⁵ Section 1702(a)

⁷⁶ Section 1702(b)

The bottom line should be that when acting in good faith and adhering to widely accepted due diligence standards, nonprofit organizations should be allowed to provide aid and services to people in need.

D. Humanity

The current U.S. government's lens of anti-terrorist financing is limited to a 'disrupt and dismantle' strategy that ignores the bigger picture. When the lens of the humanitarian imperative, is applied, we see suffering that can be avoided and opportunities for peace that can be exploited.

I urge you to adopt a humanitarian lens and instruct Treasury to do the same. Concrete steps in this direction include:

- Congressional re-examination of the finding in EO 13224, which placed humanitarian aid on the list of prohibited transactions with designated terrorist organizations.⁷⁷ IEEPA bars the President from blocking "donations of food, clothing and medicine, intended to be used to relieve human suffering, unless the President determines that such donations would 'seriously impair his ability to deal with any national emergency.'" Congress can to determine the extent and severity of this threat.
- Congress should make it clear that it wants charitable funds to be used only for charitable purposes. As a result, currently frozen funds should be released and new procedure adopted that would avoid freezing charitable funds in the future. The judicial branch could implement much of the process, bringing an element of independent review and decision making into the process. This would help de-politicize decisions regarding use of charitable funds and provide accountability. It also draws on the success of regulatory structure in the United Kingdom, where the UK Charity Commission is an arm of the court system. Courts could appoint conservators or receivers to oversee disposition of charitable funds in a manner that protects the charitable mission and respects the intent of donors. This would fill the gap in current law, and meet the public policy objectives of protecting charitable programs and the people they serve.

Conclusion

In May 2009, after a three year investigation of the worldwide impact of counterterrorism laws in 40 countries that included 16 hearings, the prestigious International Commission of Jurists released the report *Assessing the Damage, Urging Action*.⁷⁸ It found that many governments, including the U.S., have "confronted the threat of terrorism with ill-conceived measures that have undermined cherished values and resulted in serious human rights violations." It calls on governments to re-assess their strategies and not let temporary measures become permanent. Oversight by this subcommittee can serve as the first step in this reassessment.

On May 12, 2010 a group of thirty charities and experts wrote to President Barack Obama asking him to fulfill the commitment made in his June 2009 speech in Cairo to address problems current

⁷⁷ Section 1702(b)(2)

⁷⁸ http://icj.org/news.php3?id_article=4453&lang=en

national security laws create for charitable giving. The letter says, "Since the Reagan administration's declaration in 1984 that 'a hungry child knows no politics,' U.S. policy has been to provide humanitarian assistance on the basis of need, without regard to political affiliation, creed, race or the international status of the country or territory to which a person belongs. It is the Golden Rule of the American nonprofit sector as it provides humanitarian assistance all over the world."

I hope this committee will assess anti-terrorism financing programs in the context of this vision, respecting both our long traditional of charitable giving and security needs. Thank you for considering these issues. I look forward to a constructive dialog aimed at resolving the problems described.

The International Red Cross and Red Crescent Movement's Principles of Conduct in Disaster Response Programmes:

1. The humanitarian imperative comes first;
2. Aid is given regardless of the race, creed or nationality of the recipients and without adverse distinction of any kind. Aid priorities are calculated on the basis of need alone;
3. Aid will not be used to further a particular political or religious standpoint;
4. We shall endeavor not to be used as an instrument of government foreign policy;
5. We shall respect culture and custom;
6. We shall attempt to build disaster response on local capacities;
7. Ways shall be found to involve program beneficiaries in the management of relief aid;
8. Relief aid must strive to reduce vulnerabilities to future disaster as well as meeting basic needs;
9. We hold ourselves accountable to both those we seek to assist and those from whom we accept resources;
10. In our information, publicity and advertising activities, we shall recognize disaster victims as dignified human beings, not hopeless objects.

Reform Principles

The following ten principles should guide the U.S. government's approach to fixing national security rules and policies that create problems for legitimate charities, development programs, grantmakers, peacebuilding efforts, human rights advocacy and faith-based organizations:

1. The charitable mission, as stated in an organization's governing documents, should be protected at all times.
2. Humanitarian aid to non-combatants should be legal when necessary to save lives or relieve suffering, even when contacts with a listed terrorist organization are unavoidable in order to deliver such aid.
3. Aid and development programs should put the humanitarian imperative first, be nondiscriminatory, and free to target vulnerable populations, such as children and the disabled and promote community development.
4. The efforts of peacebuilding and mediation programs contribute to a peaceful world and should be legal, especially when they seek to turn terrorist organizations away from violence.
5. Human rights and security laws are complementary, and not in competition with each other.
6. Security policies and rules applicable to nonprofits should be transparent, fair and proportionate.
7. An action, including donating to a charity or partnering with another organization, that is legal at the time it is taken should never become illegal after the fact.
8. Nonprofits and their donors should not be targeted for investigation or sanctions based on their religious or political beliefs.
9. To be guilty of the crime for supporting terrorism, a person or organization must intend to support its illegal and violent activities.
10. Nonprofit organizations are independent of government. Security policies and rules should not seek to use them as instruments of foreign policy.

Additional Resources

Collateral Damage: How the War on Terror Hurts Charities, Foundations, and the People They Serve by Grantmakers Without Borders and OMB Watch, June 2008, online at <http://www.ombwatch.org/node/3727>

How the Work of Charities Counters Terror: And How U.S. Laws Get in the Way, Charity and Security Network, December 2009, online at http://www.charityandsecurity.org/system/files/CharityandSecurityNetwork_How_the_Work_of_Charities_Can_Counter_Terror.pdf

Resume**Kay Guinane, Program Manager, Charity and Security Network**

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Kay Guinane is a public interest attorney who specializes in the rights of nonprofit organizations, particularly in the areas of free speech and national security. Currently she is Program Manager of the Charity and Security Network, a project aimed at bringing down barriers to legitimate work of nonprofits from ill-advised national security measures. Her work includes research, advocacy, presenting and consulting with NGOs and grantmakers in the U.S. and abroad. Prior to that she was Director of Nonprofit Speech Rights at OMB Watch, a Washington, D.C. based government watchdog organization.

Ms. Guinane has represented a wide variety of nonprofit organizations, both as an advocate on issues and an advisor on tax and nonprofit law. Ms. Guinane has worked for the Alliance for Justice, the National Consumer Law Center, Environmental Action (Washington, DC), the Legal Aid Society of Louisville, and Citizens for Social and Economic Justice and the public defender service (Hazard, Kentucky). She holds Bachelors and Juris Doctor degrees from the State University of New York at Buffalo and is licensed to practice law in the District of Columbia, Kentucky and Maryland.

Publications:

Ms. Guinane has written and co-authored several reports on related subjects. These include the U.S. chapter for the book *Civil Society Under Strain: Counter-Terrorism Policy, Aid and Civil Society*, (Kumarian Press, edited by the London School of Economics Civil Society Centre), *How the Work of Charities Can Counter Terror* (Charity and Security Network 2009), *Collateral Damage: How the War on Terror Hurts Charities, Foundations and the People they Serve* (OMB Watch and Grantmakers Without Borders, July 2008), *Counterterrorism Developments Impacting Charities*, (International Center for Not for Profit Law, 2007), *Muslim Charities and the War on Terror: Top Ten Concerns and Status Update* (OMB Watch, March 2006), *The USA Patriot Act and its Impact on Nonprofit Organizations* (OMB Watch, 2003), and *Anti-Terrorism Bill Could Impact Nonprofits* (2001, abridged version in the *Nonprofit Quarterly* Spring 2002).

Publications on nonprofit speech rights issues include co-authoring the book *Seen But Not Heard: Strengthening Nonprofit Advocacy* (Aspen Institute, 2007), *Wanted: A Bright-Line Test Defining Prohibited Intervention in Elections by 501(c)(3) organizations* (First Amendment Law Review, University of North Carolina School of Law, Fall 2007), *IRS Political Activities Enforcement Program for Nonprofit Groups: Questions & Concerns* (OMB Watch, 2006), and *Attacks on Nonprofit Speech: Death by a Thousand Cuts I and II* (OMB Watch 2003 and 2004). Ms. Guinane joined attorneys Elizabeth Kingsley and John Pomeranz in writing *E-Advocacy for Nonprofits: the Law of Lobbying and Election-Related Activity on the Net* (Alliance for Justice, 2000) and is the author of *Group Buying Power: Meaningful Choices for Energy Consumers* (American Public Power Association, 1997).

Testimony of Dr. Matthew Levitt, director of the Stein Program on Counterterrorism and Intelligence at The Washington Institute for Near East Policy, before the U.S. House of Representatives, Committee on Financial Services, Subcommittee on Oversight and Investigations, May 26, 2010

*Hearing entitled "Anti-Money Laundering: Blocking Terrorist Financing and Its Impact on Lawful Charities"*¹

Chairman Moore, Ranking Member Biggert, and distinguished members of the Committee, I thank you for the opportunity to appear before you today to discuss how to protect the charitable sector from abuse by illicit actors engaged in terrorism, political violence, or other forms of transnational threats.

The Financial Action Task Force (FATF) – the 34-member multilateral body that aims to set global standards for anti-money laundering and counter-terror financing – has found that “Terror networks often use compromised or complicit charities and businesses to support their objectives.”² In fact, FATF warned that “the misuse of non-profit organizations for the financing of terrorism is coming to be recognized as a crucial weak point in the global struggle to stop such funding at its source.”³ According to the Justice Department, intelligence indicates that terrorists continue to use charities as sources of both financial and logistical support.⁴ British officials concur. According to a joint UK Treasury/Home Office report, a “significant proportion” of terror finance investigations in the UK over 2006 included analysis of links to charities. The report found that “the risk of exploitation of charities is a significant aspect of the terrorist finance threat.”⁵

Non-profit organizations are especially susceptible to abuse by terrorists and their supporters for whom charitable or humanitarian organizations are particularly attractive front organizations. Indeed, terrorist groups have long exploited charities for a variety of purposes. Charities offer a veil of legitimacy for terrorist fundraising, attracting unwitting donors who are unaware that monies they donate for humanitarian purposes fund terror. Charities are vulnerable to abuse as money laundering mechanisms, and can be abused to provide terrorist operatives with day jobs, salaries, meeting places and means of obtaining official documents such as licenses, mortgages, and more. Consider that Hamas terrorist operatives frequently hold day jobs working within the group’s network

¹ For a more complete discussion of issues relating to combating the financing of terrorism (CFT), visit www.washingtoninstitute.org. In particular, see Matthew Levitt and Michael Jacobson, *The Money Trail: Finding, Following and Freezing Terrorist Finances*, Washington Institute Policy Focus # 89, November 2008, available online at <http://www.washingtoninstitute.org/templateC04.php?CID=302>.

² Financial Action Task Force, *Terrorist Financing*, February 29, 2008, available online at <http://www.fatf-gafi.org/dataoecd/28/43/40285899.pdf>

³ Financial Action Task Force, *Terrorist Financing*, February 29, 2008, available online at <http://www.fatf-gafi.org/dataoecd/28/43/40285899.pdf>.

⁴ Glenn R. Simpson, “Islamic Charities Draw More Scrutiny,” *Wall Street Journal*, February 23, 2008.

⁵ HM Treasury, “Financial Challenge to Crime and Terrorism,” February 28, 2007, available online at http://www.hm-treasury.gov.uk/documents/financial_services/money/fin_money_financialchallenge.cfm. 52.

of charities and social service organizations, which provide both a salary to live on and cover for their less charitable activities plotting and carrying out terror attacks. For example, documents seized from the offices of the Islamic Relief Agency (IRA) revealed the charity had been paying the salaries of ten West Bank Hamas activists.⁶ Those social welfare organizations funded by the terrorist groups engender grassroots support for said groups and create fertile spotting and recruitment grounds.

Potential Abuse of Charity by Illicit Actors

Charities tend to operate in zones of conflict and traditionally involve the flow of money in only one direction, both of which are characteristics that would arouse money laundering suspicions in other organizations. For this reason, charities are not only ideal fundraising fronts for terrorists and other illicit actors, they can also function as ideal money laundering mechanisms. Through charities, transnational terrorist groups have been able to move personnel, funds, and material to and from high-risk areas under cover of humanitarian or charity work and provide terrorist operatives with day jobs that provide both salary and cover facilitating their terrorist activities. Moreover, terrorists co-opt charitable giving through a range of diverse tactics. Some charities are founded with the express purpose of financing terror, while others are infiltrated by terrorist operatives and supporters and co-opted from within. Recognizing that analysis of this particular preferred means of terror financing demands a discerning and discriminating level-of-analysis approach, Ambassador Francis X. Taylor, then the State Department's Coordinator for Counterterrorism, noted in 2002 that "any money can be diverted if you don't pay attention to it. And I believe that terrorist organizations, just like criminal enterprises, can bore into any legitimate enterprise to try to divert money for illegitimate purposes."⁷

A growing challenge in this arena is that banned or exposed charities tied to terrorism often shut down one day only to open up some time later under new names. For example, the U.S. Treasury Department noted that after being designated in March 2002, the Bosnian branch of the al Haramain Islamic Foundation "reconstituted itself and continue operations under the name 'Vazir.'" In another case, Treasury noted that the Indonesian branch of Al-Haramain also attempted to operate under an assumed name, "Yayasan Al-Manahil-Indonesia."⁸ In July 2008, the Treasury Department added new aliases under which Al Rashid Trust and Al-Akhtar Trust International continued to

⁶ Dale L. Watson, assistant director for counterterrorism, Federal Bureau of Investigation, "Holy Land Foundation for Relief and Development, International Emergency Economic Powers Act, Action Memorandum," memorandum to R. Richard Newcomb, director of the Office of Foreign Assets Control, U.S. Department of the Treasury, November 5, 2001 ("Watson Memorandum")

⁷ U.S. Department of State, International Information Programs, "State's Taylor Summarizes Annual Global Terrorism Report," *Washington File*, May 21, 2002, available at http://www.usembassy.it/file2002_05/alia/a2052103.htm.

⁸ "Treasury Announces Joint Action with Saudi Arabia Against Four Branches of Al-Haramain In The Fight Against Terrorist Financing," Document number JS-1108, Office of Public Affairs, U.S. Treasury Department, January 22, 2004, available online at <http://www.treas.gov/press/releases/js1108.htm>

operate, years after their U.S. and U.N. designations, in "an apparent effort to circumvent sanctions imposed by the United States and the United Nations."⁹

The evolution of terrorist financing methods has cut across the spectrum of raising, laundering, transferring, storing and accessing funds. As authorities have cracked down, for example, on global charities that were financing illicit activity around the globe, some of these charities have deferred decision making to local offices and personnel from their headquarters offices. Some charities tied to illicit activities reportedly direct donors to fund their regional offices directly, instead of going through central offices. They also hire local people so as not to raise suspicion. Speaking of efforts to radicalize and recruit young Muslims in Zanzibar, a local Islamic leader noted that "there are some (charitable) agencies that sometimes use a native of the village (to recruit) because the others would be caught by the police."¹⁰ Similarly, there has been a shift in funding from investment in specific programs to investment in large infrastructure projects. Such infrastructure is not only much needed but provides effective cover for the transfer of substantial sums of money overseas. In the Philippines, for example, investigators found that terrorist financiers supporting the Abu Sayyaf Group and Raja Sulayman Movement facilitated the construction of mosques and schools under the supervision of Mohammad Shugair, a Saudi national linked by Philippine authorities to terrorist financing.¹¹

Beyond engendering grassroots support, those charities focused on providing funds to the families, orphans and widows of "martyrs" remove any existing financial disincentives to prospective terrorists and provide an incentive for participation in militant activities. Knowing their families will be provided for after their "martyrdom" enables terrorists to focus on their violent activities with the peace of mind that their families will enjoy the benefits of what amounts to a life insurance policy for terrorists. For example, CARE, a one-time charity based in Boston, actively solicited funds for families of mujahideen (Jihad fighters) and discussed the subject on intercepted telephone calls. Consider, for example, an online solicitation for Orphans Sponsorship that opens with the statement: "Do you know who I am? I am an orphan whose father died in defense of the faith." It continues, "Won't you sponsor me, and fulfill part of your obligation to my father? Won't you sponsor me? I am not really a stranger to you; I am your brother's child."¹²

Not only are donors more willing to give to humanitarian causes, but in the Muslim world they often do so as part of religiously mandated annual *zakat*

⁹ Treasury Identifies New Aliases of Al Rashid and Al-Akhtar Trusts Pakistan-Based Trusts Previously Designated for Supporting al Qaida, July 2, 2008, <http://www.ustreas.gov/press/releases/hp1065.htm>

¹⁰ Chris Tomlinson, "Islamic Extremists Use Missionary Tradition to Recruit Fighters, Spread anti-U.S. Message in East Africa," AP, February 20, 2004.

¹¹ Alcuin Papa, "New Terror-Funding Network in Place, says PNP," *Philippine Daily Inquirer*, July 12, 2008, available at <http://newsinfo.inquirer.net/breakingnews/nation/view/20080712-148112/New-terror-funding-network-in-place-says-PNP>.

¹² "Orphans Sponsorship," CARE website, <http://web.archive.org/web/20001209030900/care-intl.org/orphans1.htm> (link no longer active). See U.S. v. Muntasser et al, U.S. District Court, District of Massachusetts, 2008

contributions. Such otherwise praiseworthy donations have long been known to lend themselves to abuse, and not only by terrorists. In Pakistan, for example, scholars note that *zakat* recipients have included "orphans" with living parents, "impoverished women" decorated in gold jewelry and "old people" who long since died. The mixing of funds across different "wings" of terrorist groups also shields the group's terrorist activities under a veil of political and humanitarian legitimacy.¹³

An article in *Military Review*, written by a Belgian military officer, offers important insights into what the author describes as "zakat-jihad activism." That is, a means by which a group engaged in terrorism or political violence "generates popular support by establishing an unarmed infrastructure that provides essential services."¹⁴ This tactic not only produces significant grassroots support, it also creates an ideal means to launder and transfer funds as well as a means of providing activists day jobs and a veneer of legitimacy. In many cases, it also serves as a logistical support network for less altruistic activities.

This is certainly the case for Hamas, for example. As U.S. officials have noted, "Hamas is loosely structured, with some elements working clandestinely and others working openly through mosques and social service institutions to recruit members, raise money, organize activities, and distribute propaganda."¹⁵

The "most critical vulnerability" of this tactic, the *Military Review* article argues, "is its need for a large flow of external funds, necessitated by the local population's inability to finance all of the infrastructure needed to provide essential services."¹⁶ Targeting the primary financing channel – charitable fronts – in a counterinsurgency strategy is complicated by the fact that they enjoy legitimacy for the overtly humanitarian nature of their activities. Neglecting the extremely high cost of maintaining safe houses, buying loyalties, maintaining the physical infrastructure of its organizations, paying its members' salaries and more, critics frequently comment that terrorism is an inexpensive business and conclude that the charitable funds collected by groups engaged in terrorism

13 Information on the Islamic Red Crescent from Senate Committee on Banking, Housing and Urban Affairs, "Prepared testimony of Jean-Charles Brisard, international expert on terrorism financing, lead investigator, 9/11 lawsuit CEO, JCB Consulting International," October 22, 2003, accessed through Federal News Service; *Agence France Presse*, "Saudi pilot on FBI list denies terror links," October 16, 2001, and U.S. Department of the Treasury, Office of Public Affairs, "Treasury Department Statement on the Designation of Wa'el Hamza Julidan," September 6, 2002, <http://www.treas.gov/press/releases/po3397.htm>; For Taylor quote see U.S. Department of State, International Information Programs, "State's Taylor Summarizes Annual Global Terrorism Report," *Washington File*, May 21, 2002, http://www.usembassy.it/file2002_05/alia/a2052103.htm; For Pakistan see Timur Kuran, "Islam and Mammon: Book Excerpt," *The Milken Institute Review: A Journal of Economic Policy* (3rd Qtr. 2004), 76.

¹⁴ Erik A. Claessen, "S.W.E.T. and BLOOD: Essential Services in the Battle Between Insurgents and Counterinsurgents," *Military Review*, November-December 2007 http://findarticles.com/p/articles/mi_m0PBZ/is_6_87/ai_n24225708/

¹⁵ Written Testimony of David D. Aufhauser, Treasury Department General Counsel, Before the House Financial Services Committee Subcommittee on Oversight and Investigations, September 24, 2003, The United States House of Representatives <http://www.treas.gov/press/releases/is758.htm>

¹⁶ Erik A. Claessen, "S.W.E.T. and BLOOD: Essential Services in the Battle Between Insurgents and Counterinsurgents," *Military Review*, November-December 2007 http://findarticles.com/p/articles/mi_m0PBZ/is_6_87/ai_n24225708/

and political violence are solely geared toward good works. In fact, these charities and social service organizations – which fund and facilitate the attacks of a wide variety of groups like al Qaeda, Hamas, Hezbollah, Tamil Tigers, Iraqi insurgents, and others – form the backbone of these groups' grassroots support and operational capacity.

The "Million Dollar Man" and other Examples of al Qaeda Abuse of Charity

While the Treasury Department reports that many of the charities al Qaeda has relied on in the past as a source of funds have been disrupted or deterred from continuing such activity, the department has also noted that charities serving as fronts for terrorist groups often open up under new names soon after they are shut down.¹⁷ After a flurry of designations in the period after 9/11, Treasury has continued to designate charities tied to al Qaeda and its affiliates on a regular basis. These include a number of NGOs based in Saudi Arabia, such as the International Islamic Relief Organization (IIRO) and al-Haramain, as well as the Kuwait-based Revival of Islamic Heritage Society (RIHS).

Connections between the al Haramain Islamic Foundation and terrorism were first exposed in 2002, after the arrest of Omar al-Farouq in Indonesia on June 5, 2002. Al-Farouq, al-Qaeda's operational point man in Southeast Asia, told his interrogators that al-Qaeda operations in the region were funded through a branch of the Saudi-based al-Haramain Islamic Foundation. According to al-Farouq, "money was laundered through the foundation by donors from the Middle East."¹⁸ In January 2004, the United States and Saudi governments jointly designated the Indonesia, Kenya, Tanzanian and Pakistani branches of the charity and submitted their names to the UN 1267 Sanction Committee. That action was based on information that the offices "provided financial, material and logistical support to the Usama bin Laden's (UBL's) al-Qaida network and other terrorist organizations."¹⁹

Interestingly, the U.S. approach at the time aimed at designating only those branches of a charity most directly involved in terrorist activity. In a sign of the inherent risks of such a strategy, after just six months the U.S. and Saudi governments designated Aqeel al-Aqil, the former overall head of al-Haramain, along with an additional five al-Haramain offices in Afghanistan, Albania, Bangladesh, Ethiopia and the Netherlands.²⁰ Despite these actions, including the inclusion of several al-Haramain branches on the U.N. designation list, the U.S. Treasury reported in June 2008 that parts of the al-Haramain organization continued to operate and the charity's leadership had attempted to reconstitute the organization's operations. Treasury therefore issued a blanket

¹⁷ United States Department of Treasury, "Under Secretary for Terrorism and Financial Intelligence Stuart Levey Testimony Before the Senate Committee on Finance," April 1, 2008, available online at <http://www.treas.gov/press/releases/hp898.htm>; David R. Sands, "Iran uses Fronts to Evade US Sanctions," Washington Times, June 13, 2007.

¹⁸ Romesh Ratnesar, "Confessions of an Al-Qaeda Terrorist," *Time.com*, September 15, 2002. Available online at www.time.com/time/magazine/printout/0.8816.351194.00.html

¹⁹ "Treasury Announces Joint Action with Saudi Arabia Against Four Branches of Al-Haramain in the Fight Against Terrorist Financing," January 22, 2004, <http://www.treasury.gov/press/releases/js1108.htm>

²⁰ "Additional Al-Haramain Branches, Former Leader Designated by Treasury as Al Qaida Supporters; Treasury Marks Latest Action in Joint Designation with Saudi Arabia," June 2, 2004, <http://www.treasury.gov/press/releases/js1703.htm>

designation of the entirety of the al-Haramain Islamic Foundation organization, including its Saudi-based headquarters, for providing financial and material support to al Qaeda and other terrorist organizations.²¹

Also in June 2008, the U.S. Treasury Department designated the entirety of another Gulf-based charity, the Kuwaiti Revival of Islamic Heritage Society (RIHS). In January 2002 the U.S. government and United Nations designated the Afghanistan and Pakistan offices of RIHS, but despite these and other actions – like the closure or raid of six RIHS offices from Azerbaijan to Cambodia -- the organization continued to engage in support for al Qaeda and other terrorist groups, according to the U.S. government. Announcing the designations, Treasury informed that RIHS leadership not only “actively managed all aspects of the organization’s day-to-day operations,” but was fully aware of its illegitimate activities. Such activities included RIHS financing for the operations of the Pakistan-based Lashkar e-Tayyiba, the group responsible for the 2006 Mumbai commuter train attack and the 2001 attack on the Indian Parliament. Similarly, an RIHS employee provided logistical support to then-fugitive Jemaah Islamiyah (JI) leader “Hambali,” while the RIHS office in Bangladesh was accused of funding the military activities of Jamaat Mujahidin Bangladesh, the group that launched near-simultaneous bombings across Bangladesh in 2005. RIHS funded al-Qaeda and other groups in Somalia as well, according to Treasury.²²

Speaking in the Gulf, Treasury Undersecretary Levey noted that “terrorist organizations and al Qaeda raise money in the Gulf by going to individual donors and through charities.”²³ This was evident in 2006, when Treasury designated Abd Al Hamid al-Mujil, executive director of the Eastern Province office of the International Islamic Relief Organization (IIRO), described by fellow jihadists as the “million dollar man” for his support of Islamic militant groups. According to the public statement announcing his designation, Mujil boasted a long history of financing al Qaeda and its Southeast Asian affiliates, the Abu Sayyaf Group and Jemaah Islamiyah.²⁴

The Need for Due Diligence within the Charitable Sector

The findings of investigative bodies in the U.S., Great Britain, and elsewhere, as well as those of technocratic, non-partisan, multilateral bodies such as the Financial Action Task Force (FATF), appear to come as an unwelcome surprise to some in the academic and non-profits sectors. For some, efforts to stem the flow of funds available for terrorism and other transnational threats is a farce and governments are not to be believed when they point to successes in either stemming the flow of funds to terrorists or following financial trails to ferret out terrorist networks. Some dismissively describe

²¹ “Treasury Designates Al Haramain Islamic Foundation,” June 19, 2008, <http://www.treas.gov/press/releases/hp1043.htm>

²² “Kuwaiti Charity Designated for Bankrolling al Qaida Network,” June 13, 2008, <http://www.treas.gov/press/releases/hp1023.htm>; “Fact Sheet: The Continuing War on Terrorist Assets,” January 9, 2002, <http://www.ustreas.gov/press/releases/po909.htm>

²³ “Millions of Dollars ‘May Fund Terrorism,’” *Gulf Daily News*, February 27, 2008.

²⁴ United States Department of Treasury, “Treasury Designates Director, Branches of Charity Bankrolling Al Qaida Network,” August 3, 2006, available online at <http://www.treas.gov/press/releases/hp45.htm>.

abuse of charities for terrorist financing as a “reflexive equation of Islamic charities with terrorism.”²⁵ This, however, is a critique that flies in the face of the extensive available evidence and simply falls flat.

Consider, for example, that in October 2007, Sheikh Abdel-Aziz Al-Asheikh, the Grand Mufti of Saudi Arabia and the most senior Wahhabi cleric, released a religious edict, or *fatwa*, instructing Saudis not to leave the Kingdom to participate in jihad – a statement directed primarily at those considering going to Iraq – and urged Saudis to “be careful about where [their money is] spent so it does not damage Muslims.”²⁶ More recently, the Saudi Council of Senior Ulema (scholars) issued a *fatwa* in April 2010 explicitly forbidding the financing of terrorists and their activities.²⁷ Beyond the obvious, such statements are notable for acknowledging that Saudi charitable giving is susceptible to abuse by terrorists and insurgents– and taking public action to mitigate the threats this poses for both the personal security of citizens and the public integrity of charitable giving.

There can be no doubt that charity is a value of paramount importance to donors and recipients alike. International aid is a powerful tool in U.S. foreign policy and humanitarian giving is an American value and a laudable religious tradition. Recognizing, as illicit actors already have, that the charitable sector is vulnerable to abuse, and devising policies that protect charities from abuse even as they promote charitable giving, is the true challenge of the day.

The clean image of violent organizations engaged in charitable activity, often operating in a corrupt environment, also leaves them open to exposure. It is therefore critical to expose the underlying fraud inherent in such organizations whereby donors are led to believe they are donating funds to non-violent, humanitarian organizations, when those funds are actually going to fund Hamas, Hezbollah, Tamil Tigers, or similar groups. The most effective means of doing this is by publicly designating such groups as a means of informing the public and disrupting terrorist financing.

Recognizing this truism, the U.S. Treasury Department has proactively sought to help the charitable sector better regulate itself from diversion or exploitation by rogue actors. Treasury developed and published guidelines of best practices for charities, as well as a risk matrix identifying “common risk factors associated with disbursing funds and resources to grantees.” But even Treasury acknowledges that self-regulating

²⁵ Ibrahim Warde, *The Price of Fear: The Truth Behind the Financial War on Terror*, Berkely: University of California Press, 2007.

²⁶ “Saudi Cleric Issues Warnings Over Militants.” Reuters, October 1, 2007, accessed at: <http://www.reuters.com/article/topNews/idUSL0117164820071001?feedType=RSS&feedName=topNews>

²⁷ “Council of Senior Ulema Fatwa on Terror-Financing,” Press Release from the Royal Embassy of Saudi Arabia, Washington, D.C., May 2, 2010, <http://www.saudiembassy.net/print/announcement/announcement05071001.aspx>

guidelines are only designed to assist charities that attempt "in good faith" to protect themselves from terrorist abuse.²⁸

The government's admission that it can only do so much to help the charitable sector self-regulate, and the inherent limitations of self-regulation, highlights the critical need for independent scholarship on the gray area between charitable giving and terror financing. The fact that the government's work in this area is often based on sensitive intelligence and therefore cannot be fully transparent, makes the work of outside scholars even more essential. Similarly, the activities of those who divert charitable funds for illicit purposes are by their very nature covert. Proper due diligence demands more than just hiring a reliable accounting firm to balance the books. It requires collecting information about the charity's partners and recipient agencies operating on the ground, often in areas of conflict where such scrutiny is difficult. Scholarship can fill these gaps. Research can inform donors whether recipient agencies have taken all possible precautions against supporting terrorism. Research can also uncover whether recipient organizations partner with any other charities or service agencies with ties to terrorist elements.

Identifying those charities that conduct proper due diligence to prevent association -- either willful or inadvertent -- with terrorist entities, and identifying those that do not, is critical to achieve this goal. To maintain their good reputations, credibility, and donor trust -- and to protect the donor public from abuse and fraud -- charities must partner with transparent institutions with due diligence programs aimed at weeding out recipients tied to terrorist groups. Scholarly research and writing on such important issues, of concern to both policymakers and the general donor public, serves a clear public need.

Consider the case of charitable giving in the Palestinian context. Robust international aid to meet the needs of Palestinians is important, but with the caveat that such support is completely detached from terrorism. In essence, providing Palestinians much-needed international aid and denying Hamas the ability to muddy the waters between charitable giving and suicide bombings are simply two components of one foreign policy objective. To this end, the example of American Charities for Palestine (ACP), is illustrative. ACP works with the U.S. Agency for International Development (USAID) and other groups to improve the lives of Palestinians in the West Bank and Gaza. According to its mission statement,

ACP acts as prudent fiduciary of the American people's resources and expertise. Inherent to our Mission is the maintenance of a formal partnership with the government of the United States of America, to ensure that all support and expertise provided to Palestinian civil society has been thoroughly vetted, and is provided in strict coordination with, and adherence to, U.S. government guidelines.²⁹

²⁸ U.S. Department of the Treasury, "Risk Matrix for the Charitable Sector," March 8, 2007, available at http://www.treas.gov/offices/enforcement/ofac/policy/charity_risk_matrix.pdf.

²⁹ See <http://www.acpus.org/mission-statement>

Foreign aid is an important and effective tool for buttressing allies, alleviating poverty and suffering, supporting key foreign policy objectives, and promoting the image and ideals of the United States abroad. Indeed, as its own website attests USAID "plays a vital role in promoting U.S. national security, foreign policy, and the War on Terrorism."³⁰ Toward these goals—and considering that several agency-approved aid recipients have been linked to terrorist groups in recent years – the implementation of a global partner-vetting system (PVS) is a welcome and overdue development.³¹

Conclusion

The charitable sector remains vulnerable to terrorist financing. One reason for this, according to FATF, is that charities are subjected to lesser regulatory requirements than other entities, such as financial institutions or private companies.³² The US has been largely alone in cracking down on abuse of charities and NGOs. Many other countries have been reluctant to take any steps to tackle this problem, often out of concern that they will appear to be targeting Muslim humanitarian efforts. Countries in the Middle East have been particularly resistant to taking action against charities. Since charity or “zakat” is one of the five pillars of Islam, the governments are worried that they will be portrayed as anti-Islamic. In Europe, some E.U. member states have resisted European Union efforts to develop solutions – pushing back against a 2005 EU initiative in this area. The member states regard this as an issue within their sovereignty, and the charities are resistant to EU oversight as well. For some European member states, regulating charities is more than merely a sensitive issue – but one actually raising constitutional issues. For example, in Sweden and Denmark even the prospect of registering charities triggers constitutional considerations.³³

Despite some criticism, the U.S. government has been consistent in its efforts to crack down on the abuse of the charitable sector by terrorist organizations. The Treasury Department has designated more than 40 charities with ties to al Qaeda, Hizballah, and Hamas among others, some with branch offices in the U.S. The U.S. has also prosecuted charities and their leaders, including in the case of the Holy Land Foundation for Relief and Development (HLF) which was found guilty on all counts in November 2008.

In none of these cases was U.S. government action capricious or based on sparse, dated, or unreliable information. The designation process in particular, I know from first hand experience, is appropriately robust, vigorous and errs on the side of caution.

³⁰ USAID, "U.S. Small Businesses: Creating Opportunities with USAID," Office of Small and Disadvantaged Business Utilization/Minority Resource Center, March 2005, available at http://www.usaid.gov/business/small_business/1_Small_Business_Introduction.pdf

³¹ See Matthew Levitt, "Better Late than Never: Keeping USAID Funds out of Terrorist Hands," Policywatch # 1277, The Washington Institute for Near East Policy, August 24, 2007, available online at <http://www.washingtoninstitute.org/templateC05.php?CID=2653>

³² FATF Report Combating the Abuse of Non-Profit Organizations. October 11, 2002. <http://www.fatf-gafi.org/dataoecd/53/53/34260889.pdf>.

³³ Interview with European Commission Official, September 2007

Designated entities can and do appeal their designations, and the Treasury Department has a record of lifting designations when warranted.³⁴

It should be clear that charities and international aid organizations come to this problem set from a noble and well intentioned perspective focused on the need to highlight opportunities to facilitate quick, efficient and timely aid. Thankfully, promoting opportunities for charitable giving and reducing the risk those opportunities are abused for illicit purposes are in no way mutually exclusive goals. Unfortunately, there are those who insist otherwise. They stress that due diligence on the part of charities is difficult and costly, and insist it has only limited value. In fact, the real question of the day is how to most effectively streamline due diligence and make it more cost effective. There should be no debate over the basic threshold for harmonizing charity and security: a basic commitment to non-violence. Balancing the risk of violence and the opportunity for charity, government and the non-profit sector both have a responsibility to err on the side caution. Both also have a responsibility to work cooperatively to thaw the chilling effect that the government's public response to terrorists' abuse of charities has had on charitable giving within the United States, and within Muslim-American communities in particular. The problem is not enforcement of U.S. laws banning material support to terrorist organizations (indeed, in the history of Treasury's designation regime only a handful of U.S. based charities have been designated), but rather the unintended impact this has had on charitable giving. Greater due diligence on the part of non-profit organizations, combined with government outreach and information campaigns such as Treasury's "Updated Anti-Terrorist Financing Guidelines: Voluntary Best Practices for U.S.-Based Charities," would go a long way toward resolving this problem.³⁵

³⁴ Note for example, the appeals of the Holy Land Foundation for Relief and Development (HLFRD), the Islamic African Relief Agency (IARA), Al-Haramain Foundation, and Kindhearts, to the U.S. courts. Examples of individuals removed from the Treasury designation lists can be found on the Treasury website. For the removal of Mohamad Nasir Abas, a former commander of Jemah Islamiyah, see <http://www.treas.gov/offices/enforcement/ofac/actions/20081002.shtml>. For other examples, see <http://www.treas.gov/offices/enforcement/ofac/actions/20100506.shtml> for removals made on May 6, 2010; See <http://www.treas.gov/offices/enforcement/ofac/actions/20100108.shtml> for removals made on January 8, 2010; See <http://www.treas.gov/offices/enforcement/ofac/actions/20091103.shtml> for removals made on November 3, 2009.

³⁵ See Treasury's "Updated Anti-Terrorist Financing Guidelines: Voluntary Best Practices for U.S.-Based Charities," <http://www.ustreas.gov/offices/enforcement/key-issues/protecting/charities-intro.shtml>

Blocking Faith, Freezing Charity

CHILLING MUSLIM CHARITABLE GIVING
in the "WAR ON TERRORISM FINANCING"



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**Blocking Faith, Freeing Charity:
Chilling Muslim Charitable Giving in the "War on Terrorism Financing"**

PUBLISHED: June 2009

FRONT COVER PHOTOGRAPH: Abu Waqidi/Getty Images
Members of a Muslim congregation in England give Zakat donations for the needy. Zakat is the Islamic equivalent of tithing. In the United States, the right of annual Muslim charitable giving, Zakat, is one of the core "five pillars" of Islam and a religious obligation for all observant Muslims.

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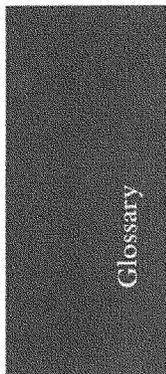
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ACHR: American Convention on Human Rights

ADC: American-Arab Anti-Discrimination Committee

AEDPA: Antiterrorism and Effective Death Penalty Act

AHF: Al Haramain Islamic Foundation-USA

APA: Administrative Procedures Act

BIF: Benevolence International Foundation

CAIR: Coalition on American-Islamic Relations

CERD: International Convention on the Elimination of All Forms of Racial Discrimination

FBI: Federal Bureau of Investigation

FISA: Foreign Intelligence Surveillance Act

FTO: Foreign Terrorist Organization

GAO: Government Accountability Office

GCO: Goodwill Charitable Organization

GRF: Global Relief Foundation

HLF: Holy Land Foundation for Relief and Development

IARA: Islamic American Relief Agency-USA

ICCP: International Covenant on Civil and Political Rights

ICRC: International Committee of the Red Cross

IEEPA: International Emergency Economic Powers Act

INA: Immigration and Nationality Act

IRS: Internal Revenue Service

IRTPA: Intelligence Reform and Terrorism Prevention Act

ISNA: Islamic Society of North America

JTF: Department of Justice Joint Terrorism Task Force

LIFE: Life for Relief and Development

LITE: Liberation Tigers of Tamil Eelam

MPAC: Muslim Public Affairs Council

NAIT: North American Islamic Trust

NGO: Non-governmental organization

OFAC: Department of Treasury Office of Foreign Assets Control

OIG: Department of Justice Office of the Inspector General

PKK: Kurdistan Workers Party

RRRA: Religious Freedom Restoration Act

SDGT: Specially Designated Global Terrorist

SDN: Specially Designated Nationals and Blocked Persons

SDT: Specially Designated Terrorist

TFPC: Department of Treasury Office of Terrorist Financing and Financial Crimes

TYEA: Trading with the Enemy Act

UCC: Unindicted co-conspirator

UDHR: Universal Declaration of Human Rights

UN: United Nations

USAID: United States Agency for International Development

The government's actions have created a climate of fear that chills American Muslims' free and full exercise of their religion through charitable giving, or Zakat, one of the "five pillars" of Islam and a religious obligation for all observant Muslims.

I. Executive Summary and Introduction

a. Introduction

On September 24, 2001, President George W. Bush announced in the White House Rose Garden that, in a strike on the financial foundation of the global terrorist network, the Treasury Department would, without consulting Congress, be expanding the Treasury Department's unilateral authority to freeze the assets of organizations it considered terrorist organizations. He declared, "Just to show you how insidious these terrorists are, they often times use nice-sounding, non-governmental organizations as fronts for their activities. We have targeted three such NGOs. We intend to deal with them, just like we intend to deal with others who aid and abet terrorism." The Treasury Department announced they were investigating over 30 Muslim charities.¹

Within the space of ten days in December 2001, the federal government froze the assets of the three largest Muslim charities in the United States—the Holy Land Foundation for Relief and Development, Global Relief Foundation, and Benevolence International Foundation—directly seizing each of their assets during the Muslim holy month of Ramadan, at the height of annual Muslim charitable giving. These charities, which had been operating without incident for years—and for over a decade in the case of the Holy Land Foundation—were not on any government watch list before their assets were frozen. Indeed, before it was shut down the Holy Land Foundation had made repeated requests to government officials for assistance in complying with the law, only to be rebuffed.

The government's actions against these three charities were the start of a pattern of conduct that violated the fundamental rights of American Muslim charities and has chilled American Muslims' charitable giving in accordance with their faith, seriously undermining American values of due process and commitment to First Amendment freedoms.

Without notice, and through the use of secret evidence and unannounced investigations, the Department of the Treasury has closed six U.S.-based, American Muslim charities to state by designating them as terrorist organizations. The consequences of designation include the seizure and freezing of all financial and tangible assets, as well as significant civil and criminal penalties. The federal government has closed down a seventh U.S.-based, American Muslim charity by declaring the charity to be "under investigation" and freezing all its assets. In addition, although the Treasury Department has not yet designated any of the six charities, they have not been designated as terrorist organizations or had their assets frozen pursuant to a Treasury Department blocking order, they have

Today, the Treasury Department has virtually unchecked power to designate groups as terrorist organizations.

Terrorism financing laws are overly broad and lack procedural safeguards that would protect American charities against government mistake and abuse.

suffered as a result of publicly announced investigations, law enforcement raids, and intrusive surveillance. The Treasury Department's actions, in total, and as a result of these federal government actions, nine Muslim charities have been shut down in Texas, Michigan, Missouri, Illinois, Oregon, Ohio, Massachusetts, and New York.

Although the need to ensure that humanitarian aid and charitable donations are not diverted to support terrorism is a real and valid concern, both the terrorism financing laws and the government's interpretation of them raise serious constitutional and human rights concerns. The terrorism financing laws provide executive branch officials with practically unlimited discretion in targeting

The government's actions have created a climate of fear that chills American Muslims' free and full exercise of their religion through charitable giving, or Zakat, one of the "five pillars" of Islam and a religious obligation for all observant Muslims.

ing groups for designation as terrorist organizations, and the federal government's enforcement of terrorism financing laws has disproportionately affected Muslim charities. Of nine U.S.-based charities whose assets have been seized by the Department of Treasury, seven are Muslim charities, and two are Tamil charities that provided humanitarian aid in Sri Lanka. In the majority of these cases, the government has not brought charges; only three designated U.S.-based Muslim charities have faced criminal prosecution, and only one has been convicted.

Today, the Treasury Department has virtually unchecked power to designate groups as terrorist organizations. Terrorism financing laws are overly broad and lack procedural safeguards that would protect American charities against government mistake and abuse. They do not require the Treasury Department to disclose the evidence on which it bases decisions to designate charities, not even to the accused charities themselves. The laws also

permit the Treasury Department to seize all assets of charities "pending investigation," pursuant only to a blocking order signed by a mid-level Treasury Department official.

Independent government studies of counterterrorism policies and court cases have exposed flaws in the government's approach to terrorism financing in exercising its designation power. In an independent review of terrorism financing laws, the Government Accountability Office (GAO) found that there is a lack of accountability for Treasury's designation and asset blocking.⁷ According to the 9/11 Commission staff, Treasury officials acknowledged that in the post-9/11 period, "some of the evidentiary foundations for the early designations were quite weak" and the haste to designate charities after 9/11 "might [have] resulted in a high level of false designations."⁸

Despite the often weak nature of the evidence, when it designated Muslim charities, indicted them criminally, or raided them, the Bush administration publicly trumpeted its actions as successes and made inflammatory and unfounded or exaggerated allegations about the charitable sector's connections to terrorism financing. The effect of these government actions is to create a general climate in which law-abiding American Muslims fear making charitable donations in accordance with their religious beliefs. Other specific federal law enforcement practices, including widespread interviews of Muslim donors about their donations without evidence of wrongdoing, also intimidate American Muslims about their right to make charitable donations.

The government's actions have chilled American Muslims' free and full exercise of their religion through charitable giving, or Zakat, Zakat is one of the core "five pillars" of Islam and a religious obligation for all observant Muslims. In interviews with American Muslim donors, the ACLU documented a pervasive fear that they may be arrested,

prosecuted, targeted for law enforcement interviews, subpoenaed, deported, or denied citizenship or a green card because of charitable donations made in fulfillment of their sacred duty to give Zakat (charity or alms). Many American Muslims reported that the climate of fear has made it impossible for them to fulfill their religious obligation to give Zakat in accordance with their faith. Muslim clerics with Islamic Muslims. The United States has long been regarded as a beacon of religious freedom, and yet U.S. terrorism financing laws and policies developed under the Bush administration are inhibiting American Muslims' ability to freely and fully practice their religion.

This report documents the effect of U.S. government actions on American Muslims' exercise of their right to profess and practice their religion through charitable giving. This report is based on 120 total interviews, including 115 interviews the ACLU conducted with Muslim community leaders and American Muslims directly affected by the U.S. government's policies regarding Muslim charities and Muslim charitable donors. The ACLU's research shows that U.S. terrorism financing policies and practices are undermining American Muslims' protected constitutional liberties and violating their fundamental human rights to freedom of religion, freedom of association, and freedom from discrimination. These policies and practices are neither fair nor effective, and are undermining American values of due process and fairness.

b. Executive Summary

Terrorism Financing Laws Impose Guilt by Association and Punish Legitimate Humanitarian Aid

Terrorism financing laws cover (i) schemes under which the government may designate organizations as terrorist through an administrative action in which the government shuts organizations down, often without allegations of criminal wrongdoing (criminal charges are not always brought in such cases), and (ii) criminal prosecutions for material support for terrorism or to a terrorist organization. These regimes raise different issues, detailed below, but have in common a lack of fundamental due process safeguards and impose guilt by association. As a result, American Muslim organizations and individuals are unfairly targeted in violation both of their First and Fifth Amendment rights and international law.

The counterterrorism legal framework is inherently vulnerable to mistake and abuse, and charities run the risk of irreversible harm on the basis of unsubstantiated evidence and without even basic due process protections.

The laws prohibiting material support for terrorism are in desperate need of re-evaluation and reform to make them fair and effective. Intended as a mechanism to starve terrorist organizations of resources, these statutes instead effectively impose guilt by association and do not provide guidance about what is and is not prohibited. Although the need to ensure that humanitarian aid and charitable donations are not diverted to support terrorism is a real and valid counterterrorism

Discriminatory Enforcement of Counterterrorism Laws against Muslim Charities

rank hearsay inadmissible in court, news articles that do not mention the charity in question, or intelligence that has been inaccurately and prejudicially translated.

For instance, the 9/11 Commission staff pointed out troubling flaws in the evidence that served as the basis for designating two U.S.-based charities for disqualification, including that the evidence for disqualification was "quite weak" and "revealed little compelling evidence that either of these charities actually provided financial support to al Qaeda, despite unprecedented access to the U.S. and foreign records of these organizations."¹ The 9/11 Commission staff also noted:

In many cases, we can plainly see that certain nongovernmental organizations (NGOs) or individuals who raise money for Islamic causes...are "linked" to terrorists through common acquaintances, group affiliations, historic relationships, phone communications, or other such contacts. Although sufficient to whet the appetite for action, these suspicious links do not demonstrate that the NGO or individual actually funds terrorists and thus provide frail support for disruptive action, either in the United States or abroad.²

In addition, independent review conducted in the United Kingdom, Canada, Sweden, and Luxembourg has cleared some designated organizations, and government representatives and courts in these countries have chastised the U.S. government for its inability to show any proof of terrorism funding in the cases under review.

provisions are so broad that, in theory, even the International Committee of the Red Cross could be prosecuted for the aid it provides.

The Terrorism Financing Legal Framework Denies Due Process to Charities

The counterterrorism legal framework denies charities due process, exposing them to mistake and abuse. The laws prohibiting material support for terrorism provide federal officials with wide discretion in choosing groups or individuals for designation, empower the Department of Treasury to seize the assets of charitable organizations with no notice and on the basis of secret evidence, and allow the Department of Justice to make retroactive designations. The laws allow the seizure and indefinite freezing of a charitable organization's assets "pending investigation" without charges, opportunity to respond, or meaningful judicial review. A 9/11 Commission staff report on terrorism financing found that the laws that allow the Treasury Department to designate and seize the assets of charities raise "substantial civil liberty concerns."³

The counterterrorism laws are inherently vulnerable to mistake and abuse, and charities run the risk of irreparable harm on the basis of unsubstantiated evidence and without even basic due process protections. There is a lack of accountability for Treasury's designation and asset blocking actions, and the limited independent review that has taken place reveals cause for concern and highlights the need for more robust oversight and due process protections for charities. Criminal prosecutions of Muslim charity leaders and associates, and government oversight review of some cases, have exposed flaws in evidence used to designate and shut down charities and have demonstrated a lack of persuasive evidence of terror financing by U.S.-based charities. Criminal prosecutions and independent review have revealed that the evidence used to designate Muslim charities has included

issue, both the material support statutes and the government's interpretation of the statutes raise constitutional and human rights concerns.

The laws prohibiting material support for terrorism contain deeply troubling constitutional flaws. Because the material support statutes impose penalties on individuals and organizations, these statutes purport to be laws. Under these statutes, blacklisted individuals and organizations, undermine legitimate humanitarian efforts, and can be used to prosecute innocent donors who intend to support only lawful activity through religious practice, humanitarian aid, speech, or association. The government has argued that those who provide support to designated organizations can run afoul of the law even if they oppose the unlawful activities of the designated group, intend their support to be used only for humanitarian purposes, and take precautions to ensure that their support is indeed used for these purposes.⁴ This broad interpretation of the material support prohibition effectively prevents humanitarian organizations from providing needed relief in many parts of the world where some designated groups control schools, orphanages, medical clinics, hospitals, and refugee camps.⁵

Because the material support statute contains no general exception for humanitarian assistance, many benign activities that are crucial for humanitarian aid and disaster relief are labeled material support, including provision of food aid, medicines, blankets, clothing, or tents. Other activities that arguably fall within the English text of the statute include health experts' advice on creating clean water supplies in a refugee camp, conflict resolution programs, and doctors' training on how to test, treat, and contain contagious diseases. Under the material support statute, an organization can provide medical support, but not clean drinking water with which to take the medication. The material support

statute also prohibits the dissemination of information that could be used to identify, locate, or harm individuals or organizations, and the dissemination of information that could be used to identify, locate, or harm individuals or organizations.

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In addition, at least six U.S.-based, American Muslim charities, including KinderUSA (Texas), Life for Relief and Development (Michigan), Al-Mabarrat (Michigan), Child Foundation (Oregon), Help the Needy (New York), and Care International (Mississippi) have been named under investigation orders. The government has not publicly stated for what their assets seized pursuant to blocking order, but have suffered as a result of government conduct, including publicly announced investigations, law enforcement raids, and intrusive surveillance. Two of these charities, Help the Needy and Care International, have closed. The ACLU has documented that raids of Muslim charities—conducted without the government's even going through the designation or asset-blocking process—have substantially disrupted their operation, scaring off donors in the absence of indictable evidence of wrongdoing.



People of the Al-Ibtisam Academy, a Muslim school in Michigan, court-bond released for Zakat. The government's actions have chilled American Muslims' free and full exercise of their religion through charitable giving, as Zakat, one of the core "five pillars" of Islam and a religious obligation for all observant Muslims. (Clarence Iyah, Jr./Detroit News)

Intimidation of Muslim Donors by Law Enforcement

Federal law enforcement is engaging in practices that intimidate Muslim donors and create a climate of fear that chills American Muslims' free and full exercise of their religion through charitable giving. Many donors reported to the ACLU that the Federal Bureau of Investigation (FBI) has approached major donors to Muslim charities at their workplaces and homes for interviews about their charitable donations and knowledge of Muslim charities' activities locally and nationally. For example, in one coordinated action, the FBI interviewed about 80 Muslim donors in El Paso, about or regarding their donations to Muslim charities. Muslim donors also reported that upon return home from travel overseas, Customs and Border Protection agents subject them to detailed questioning about their donations to legal, U.S.-based Muslim charities. Furthermore, donors have been subpoenaed to testify in more than one charity-related grand jury investigation, further contributing to the community's fear.

In addition, numerous Muslim community leaders and Muslim donors told the ACLU that federal and local law enforcement and Treasury Department officials' refusal to reassure donors that they will not retroactively be held liable for donations compounds the climate of fear. Moreover, many interviewees reported that they believe that federal and local law enforcement has also approached community members about serving as informants in their mosques to monitor donations there. Several interviewees confirmed they had been approached in this manner, and while it is impossible for the ACLU to assess the extent of this practice, community members' perception that this is happening on a large scale contributes to the climate of fear that chills Muslims' charitable giving.

Chilling Effect on Muslim Charitable Giving and Impact on Religious Freedom

The government's designation, seizing of assets, and law enforcement raids of Muslim charities; interview of donors to Muslim charities; and criminal prosecution of Muslim charity leaders have created a chilling effect on American Muslims' charitable giving. The obligation to give Zakat (charity or alms) is one of the core "five pillars" of Islam, the five duties considered essential for all Muslims. The obligation to give Zakat is seen as a sacred duty for all observant Muslims. Many Muslims believe that the zakat must be given to the community to help the poor. Muslims are also familiar with the religious rules for the handling and distribution of Zakat, although there is not unanimity in this belief.

"Closing down the charities, you are getting to the spiritual essence of the human being. Every person needs to give to charities as a religious obligation, to feel good as a person, and the government has closed this off."

In interviews with American Muslim donors, the ACLU documented a pervasive fear among Muslim charitable donors that they may be arrested, retroactively prosecuted for donations made in good faith to legal Muslim charities, targeted for law enforcement interviews for exercising their religious obligation to pay Zakat, subpoenaed to testify in a criminal case, subjected to surveillance, deported or denied citizenship or a green card, or otherwise implicated because of charitable donations made in fulfillment of their religious obligation to give Zakat.

I don't have any religious rights anymore; I ask am living in America? It is disheartening, disappointing. I feel that I missed. My intention has been to give, but the circumstances are such that I cannot give."

For some Muslims, the ACLU interviewed, their failure to fulfill their obligation to give Zakat brings serious consequences for their religious standing, and many donors spoke poignantly of this personal impact of terrorism financing policies and practices. One Lebanese-American Muslim told the ACLU, "My religious standing is affected because the atmosphere of fear affects me. It depends on the person; not everybody is strong enough. For me, personally, this was a factor that affected me. I wasn't strong enough, so one of the pillars of my religion is not being fulfilled properly, as it should be.... If you are not fulfilling your pillar of Islam, your Zakat, it hurts you."¹⁴ Another donor explained, "Closing down the charities, you are getting to the spiritual essence of the human being. Every person needs to give to charities as a religious obligation, to feel good as a person, and the government has closed this off."¹⁵

American Muslims whose charitable giving has been affected by terrorism financing policies and practices articulated to the ACLU various concerns they feared if they give Zakat. For example, one Muslim donor told the ACLU that fear of accusations based on guilt by association has had a chilling effect on his practice of Islam through charitable donations:

The government is making accusations right and left and this has had a chilling effect on our ability to practice our religion. I haven't been able to give. We have seen different natural disasters across the world, but when we wanted to give to a Muslim charity for religious purposes we couldn't. We have been afraid; there is a fear in the community, that if we give, we will be found guilty by association, we'll be caught in this big dragnet.... I am

Since 2002, media reports have suggested, based on anecdotal evidence, that the designation of Muslim charities has created fear among American Muslim donors and chilled their charitable giving. The ACLU conducted 315 interviews with donors in the United States and American Muslims regarding Muslim charities and Muslim charitable donors. The ACLU's research confirms previous anecdotal reports of this chilling effect.

In interviews with the ACLU, many Muslims reported that the climate of fear has made it impossible for them to fulfill their religious obligation to give Zakat in accordance with their faith. For these observant Muslims, the atmosphere of fear created by the government's treatment of Muslim charities and donors has directly impacted their ability to practice their religion. One Bangladeshi-American Muslim told the ACLU, "I am so concerned about giving money to a Muslim organization. It hurts me, because I myself am not able to practice Zakat...and I cannot practice my religion fully."¹⁶ A U.S.-born Muslim man told the ACLU, "The implied threat and fear of reprisal regardless if the charity is a legal entity now stops our giving, prevents us from fulfilling our religious duty.... Limiting Zakat, it is like telling Christians they can't assemble on Sunday, to take away one-fifth of Islam, one of the five pillars of Islam, is to eat away at the religion."¹⁷ According to a Pakistani-American Muslim man:

For six years, I really have not been able to fulfill my religious duty. I have not been able to give to any Muslim charity. For the last few years, we have been very busy with work and they pushed all the Muslim issues away from me. I know what charity we could trust to give to... it is an obligation we have as a Muslim, you have to pray, you have to go on Hajj, and you have to give Zakat. If you can afford it, this is all part of being a Muslim, and we absolutely have not been able to practice our religion to the extent we are obligated to do so. This is why the Pilgrims sailed here, for religious freedom,

one individual, how am I to protect myself if I am unfairly accused? I fear being dragged into an investigation, being labeled as someone who supports terrorism. Islam says if you see a Muslim in need you have to give him charity, but if you can't it definitely prevents you from practicing your religion."

The ACLU does not suggest that the right to give donations in the name of Zakat is absolute, and neither does it maintain that donations made in the name of Zakat should be unrestricted in all cases, regardless of the circumstances. It is the chilling effect on charitable donations made in good faith and intended to be used only for humanitarian purposes that raises constitutional and human rights concerns.

Chilling Effect on Association with Muslim Community and Religious Organizations

The government's policies and practices toward Muslim charities and donors also have created a chilling effect on American Muslims' association with Muslim community and religious organizations. Mosques not only serve as prayer spaces, but as hubs for various facets of religious and cultural life. Mosques also serve as religious schools, charity distribution centers, Arabic language schools, and youth centers. ACLU research reveals that the atmosphere of fear created by the closure of Muslim charities, law enforcement interviews of Muslim donors and other Muslims, and criminal prosecution of some Muslim charity leaders for material support, is unfairly limiting American Muslims' freedom to associate with Muslim religious and community organizations, including mosques, Islamic schools, Arab and Muslim advocacy organizations, and Muslim charities.

Many American Muslims reported to the ACLU that the climate of fear created by the government's policies regarding Muslim charities and charitable

giving is affecting their participation in a wide range of religious activities. Muslim community leaders and members in Michigan and Texas described to the ACLU the chilling effect on Muslims' participation in religious activities such as congregational prayer at the mosque on Friday, Eid celebrations and the conclusion of Ramadan. This chilling effect impacts both freedom of religion and association, in contravention of constitutional and human rights protections.

The United States has long been regarded as a beacon of religious freedom. And yet U.S. terrorism financing laws and policies developed under the Bush administration are inhibiting American Muslims' ability to freely and fully practice their religion.

For example, an American Muslim man told the ACLU, "What they are affecting is the institutions through which I participate in my religion. How do I explain to my son that unlike a church that has a picnic in the park, we are unable to participate in such events?" An American Muslim woman said that she and her family now are too fearful to worship at their mosque. She explained, "We don't have as much outward participation in our religion as we used to... Because of the government's intimidation, if I am afraid to go to the mosque, how can I pray? What is your suggestion to that person you were seen praying with? More people like us are choosing to pray at home instead of getting out and praying in the congregation."¹⁸

Collateral Consequences Undermine Counterterrorism Efforts

The ACLU's research documented several collateral consequences of U.S. terrorism financing policies and practices towards U.S.-based Muslim charities and Muslim donors that actually undermine counterterrorism efforts. The ACLU's research showed that these policies and practices are alienating Muslim Americans, are damaging America's reputation and diplomatic efforts in Muslim countries by giving the appearance of a U.S. government that is not supporting its own citizens and creating a chilling effect on overseas and international Muslim donors, and are undermining human rights efforts. In fact, these policies and consequences are counterproductive to the U.S. government's efforts to counter terrorism.

The ACLU found that instead of working with American Muslim donors as valuable allies in the "war on terrorism financing," the U.S. government's terrorism financing policies and practices have alienated Muslim Americans and engendered mistrust of law enforcement.¹⁹ Many American Muslims told us that the government's closure of Muslim charities and intimidation of Muslim donors has undermined their trust in federal and local government, including law enforcement authorities. One Muslim community leader in Texas told the ACLU, "A fissure has opened up between the government and our community, and this wound is not healing."²⁰ The 9/11 Commission staff found that terrorism financing policies "can undermine support in the very communities where the government needs it most," and "risks a substantial backlash."²¹

Terrorism financing policies are also undermining U.S. reputation abroad, especially in Muslim countries that are crucial allies in the "war on terrorism financing." In fact, Treasury Department-led terrorism financing efforts could undermine diplomatic efforts, such as President Bush's recent outreach out to Muslim countries. U.S. policies

give the impression that the fight against terrorism financing is a war on Islam, directly contradicting President Obama's recent announcement before the Turkish Parliament that "America's relationship with the Muslim community, the Muslim world, cannot, and will not, just be based upon opposition to terrorism."²²

The ACLU documented a significant rise in cash donations as a proportion of Muslim donor contributions. Fear of the consequences of donating to legal Muslim charities has led many Muslims to make donations exclusively in cash in mosques or their family members, in order to preserve their anonymity and protect themselves from reprisal. According to experts, this disproportionate rise in cash donations may complicate U.S. government efforts to track flows of funds.

Finally, ambiguities of the policies on material support and the climate of fear these policies have created have impacted vital humanitarian work overseas and cost lives, counter to U.S. interests abroad. Overbroad and vague material support laws create risks for humanitarian aid groups seeking to provide aid to needy civilians in areas affected by civil war and natural disasters, where designated terrorist organizations control territory. Because there is no humanitarian exemption from material support laws (only the provision of medicine and religious materials are exempted), aid workers in conflict zones are at risk of prosecution by the U.S. government. Tragically, U.S. counterterrorism laws make it more difficult for U.S. charities to operate in parts of the world where their good works could be most effective in countering extremism and enhancing security.

Conclusion

The United States is shirking its commitments under international treaties that enshrine the rights to freedom of religion, freedom of association, and freedom from discrimination. As a state party to the International Covenant on Civil and Political Rights and the Convention on the Elimination of All Forms of Racial Discrimination, the United States must respect freedom of religious belief, practice, observance and worship, and must guarantee freedom of religion without distinction on the basis of color, or national or ethnic origin. The United States must also respect the freedoms of religion and freedom of association, and their right to equal protection under the law. As one U.S.-born Muslim told the ACLU,

The freedom of religion, that's why the Puritans came here to settle in the U.S. I believe in the Constitution that was set forth by our forefathers, who were so enlightened and had such broad minds to set forth the most basic rights in our Constitution. But for our government to go directly against that, against our right to practice our religion—because a fundamental tenet of our religion is being infringed upon—that's not the right thing to do.... Religious persecution was the first and foremost reason why people came to America. To restrict religious freedom is to erode a fundamental pillar of this country.²³

The United States has long been regarded as a beacon of religious freedom, and since the 1940s, the United States has played a prominent role in promoting the rhetoric of freedom of religion in the international arena. During World War II, Franklin Roosevelt identified "freedom to worship" as one of the "Four Freedoms" in which the allies were fighting.²⁴ And, in the U.S., the War Relocation Authority police developed under the Bush administration are inhibiting American Muslims' ability to freely and fully practice their religion.

c. Recommendations

There are clear measures the U.S. government should take to ensure American Muslims can freely and fully exercise their religion while protecting charities from mistaken targeting and abuse, and promoting national security and humanitarian aid. The ACLU calls on the U.S. government, including the President, Department of Treasury, Department of Justice, Federal Bureau of Investigation, Department of State, and Congress to implement a series of discrete legal and policy changes, outlined below.

i. To the President

- Repeal Executive Order 13224, which creates mechanisms for designating individuals and groups as "specially designated global terrorists" with respect to U.S. persons and entities, as well as foreign entities emitted to constitutional protections due to their substantial connections with the United States.²⁵
- Issue an executive order requiring watch lists to be completely reviewed within three months, with names limited to only those for whom there is credible evidence of terrorist ties or activities.
- Set time limits on frozen funds. Create a process for release of frozen charitable funds to beneficiaries. Ensure charitable funds frozen by the Treasury Department are ultimately released and used for charitable purposes in accordance with the original donors' intent.
- Adequately equip the Privacy and Civil Liberties Oversight Board, established pursuant to the Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. No. 108-408 (2004), and task the Board with conducting oversight of OPAC, the Privacy and Civil Liberties Board of OPAC, the Privacy and Civil Liberties Board of exercised oversight over the Department of

Treasury's Terrorist Financing Tracking Program as part of its mandate to monitor the impact of U.S. government actions on civil liberties and privacy interests.²⁴

- Issue an executive order prohibiting racial profiling by federal officers and banning law enforcement practices that allow officers to target people for investigation and enforcement based on race, ethnicity, national origin, sex or religion.
- Order the FBI, Department of Justice Joint Terrorism Task Force, and other federal agencies to cease public raids of charities under investigation, to cease intimidating interview of Muslim donors without suspicion, and to cease surveillance of charities and mosques without evidence of wrongdoing.
- Direct the Attorney General to thoroughly review the amended Guidelines on General Crimes, Racketeering Enterprise and to amend them to protect the rights and privacy of innocent persons (as detailed in the below recommendations to the Department of Justice).
- Direct the Attorney General to revise the Department of Justice ban on racial profiling in federal law enforcement to close the existing exemption for national security and border integrity activities.
- Work with Congress to establish a statutory investigatory charter for the FBI that limits the FBI's activities and investigation with our specific and articulable facts and reasonable belief that an individual or group is or may be engaged in criminal activities, is or may be acting as an agent of a foreign power.

ii. To the Department of Treasury

- Swiftly create and implement a process for releasing frozen funds to beneficiaries via another charity for distribution in accordance with the original donors' intent and based on the nonprofit sector's proposed procedures.²⁵ Such a program may be based on powers existing in current regulations.²⁶
- For charities closed in the future, permit these charities to direct their raised funds to charities mutually approved by the frozen charity and the government.
- Ensure the right to counsel for designated charities, by allowing designated charities to use their own funds to pay for their defense.
- Withdraw the Office of Foreign Assets Control (OFAC) Anti-Terrorist Financing Guidelines/Voluntary Best Practices for U.S.-based Charities.
- Conduct public education and outreach with charities, so that charities can know how to carry out their missions while adhering to anti-terrorism laws, and avoid being blindsided by government enforcement.

iii. To the Department of Justice

- Do not retroactively target Muslim donors for enforcement or harassment on the basis of good faith donations made to lawful charitable organizations. Conduct effective outreach to reassure Muslim donors they will not retroactively be targeted for enforcement, even if charities are designated in the future.
 - Cease naming unindicted co-conspirators (UCCs) in material support prosecutions.
 - Publicly clear the UCCs in the HLF case. Expunge the names of organizations and individuals on the UCC list from any public record that identifies these groups as unindicted co-conspirators.
 - Permit defendants charged with material support to challenge the underlying designation in their criminal cases.
 - The U.S. Attorney General should thoroughly review the amended Guidelines on General Crimes, Racketeering Enterprise and amend them to:
 - Specifically prohibit the use of race, religion, national origin, or the exercise of First Amendment-protected activity as factors in making decisions to investigate persons or organizations.
 - Prohibit the FBI from initiating any investigative activity regarding a U.S. person absent information or an allegation that such person is engaged or may engage in criminal activity, or is or may be acting as an agent of a foreign power.
 - Prohibit the use of intrusive investigative techniques absent specific and articulable facts that give a reasonable indication that
- the subject of the investigation is engaging in a violation of federal law.
- Require the FBI to employ the least intrusive means necessary to accomplish its investigative objectives. When investigating the FBI should adhere to the level of the alleged activity and the strength of the evidence in determining what investigative techniques should be utilized. Intrusive techniques such as law enforcement undercover activities and recruiting and tasking sources should only be authorized in full investigations, and only when less intrusive techniques would not accomplish the investigative objectives.
 - Prohibit the FBI from collecting or maintaining information about the political, religious or social views, associations or activities of any individual, group, association, organization, corporation, business or partnership unless such information directly relates to an authorized criminal or national security investigation, and there are reasonable grounds to suspect the subject of the information is or may be involved in the conduct under investigation.
 - Revise the Department of Justice ban on racial profiling in federal law enforcement to close the existing exemption for national security and border integrity activities.
 - The U.S. Attorney General should create a mechanism for issuing Subpoena Duces Tecum of the Privacy and Civil Liberties Oversight Board. For example, this can be done through the creation of a Memorandum of Understanding between the Board and the attorney general in which the attorney general promises to enforce subpoenas issued by the Board's request unless he or she certifies that such a subpoena would be unlawful.

iv. To the Federal Bureau of Investigation

- Cease the use of race, religion, national origin, or the exercise of First Amendment-protected activity as factors in making decisions to investigate persons or organizations.
- Cease the use of intrusive investigative techniques absent specific and articulable facts that give a reasonable indication that the subject of the investigation is engaging in a violation of federal law.
- Cease initiating any investigative activity regarding a U.S. person absent information or allegation that such person is engaged or may engage in criminal activity, or is or may be acting as an agent of a foreign power. A preliminary investigation opened upon such information or allegation should be strictly limited in scope and duration, and should be directed toward quickly determining whether a full investigation, based on facts establishing reasonable suspicion, may be warranted.
- In each investigation, employ the least intrusive means necessary to accomplish its investigative objectives. Consider the nature of the alleged activity and the strength of the evidence in determining what investigative techniques should be utilized. Intrusive techniques such as recruiting and tasking sources, law enforcement undercover activities, and investigative activities requiring court approval should only be authorized in full investigations, and only when less intrusive techniques would not accomplish the investigative objectives.
- Cease collecting or maintaining information about the political, religious or social views, associations, affiliations, memberships, financial, business or partnership unless such information directly relates to an authorized criminal or national security investigation, and there

are reasonable grounds to suspect the subject of the information is or may be involved in the conduct under investigation.

v. To the Department of State

- Implement the State Department Guiding Principles on Non-governmental Organizations in the United States, including due process and protection of rights of speech and assembly.²⁷
- Review what is required to implement the Guiding Principles in the United States, Consult with the U.S. nonprofit sector to make recommendations on needed reforms that advance humanitarian work while protecting national security.
- The Secretary of State should exercise her power to grant exemptions through 2332B(j) waivers for specific technical advice and assistance, training and personnel where no violent activity is involved, to exempt these forms of assistance from the material support statute. Establish clear, ongoing policy under current law, using the humanitarian waiver or the general amendments to the statute. The statutory waiver authority could be used to signal that the U.S. will not prosecute people who are acting consistent with the rules of the International Committee of the Red Cross (ICRC).
- Create fair procedures for individuals to be removed from watch lists. These procedures should include deadlines for agency decisions and appeal rights. Support due process reforms for United Nations watch lists consistent with human rights and humanitarian law obligations.

vi. To Congress

- Reform the statutory scheme for designation of U.S. persons and entities, and of foreign entities entitled to constitutional protections due to their substantial connections with the United States,²⁸ as “specially designated global terrorists” (SDGT) under the International Emergency Economic Powers Act (IEEPA) to establish full due process protections, including:
 - Issuing transparent standards governing OFAC designations.
 - Creating a higher legal standard for designations.
 - Precisely defining the criteria for an individual or entity to be found an SDGT.
 - Enacting a (not over-broad) statutory definition of “specially designated terrorist” (SDT).
 - Providing timely notice including a full list of charges and statement of reasons.
 - Restricting the use of secret evidence.
 - Providing a meaningful opportunity to defend, including the ability to submit evidence and a hearing.
 - Requiring OFAC to provide a detailed statement of reasons for a decision to designate.
 - Providing judicial review of agency action.
 - Creating a statutory basis for challenging designations and asset freezing process.
 - Creating an effective redress program for individuals or organizations mistakenly flagged as a designated person.
- Generate intermediate sanctions for charities as part of a reformed regulatory framework for charities that includes fundamental due process protections. Such an intermediate process should include:
 - Issuing cease and desist orders to charities before taking disruptive action, to provide charities the opportunity to comply with the order. Such orders should provide detailed information about what actions or relationships are objectionable, and should include an opportunity for charities to contest the factual information or assumptions that led to the order.
 - Providing charities with an opportunity to cure before taking disruptive action. Such a process should allow charities a meaningful period of time to cure issues that would lead to designation or seizure of assets.
 - Creating an appeal process to challenge proposed actions, including:
 - Providing notice, including a full list of charges and statement of reasons.
 - Guaranteeing a right to a hearing, including fair trial or administrative hearing with cross examination and ability to submit evidence, to decide on designation.
 - Providing opportunity to present evidence in rebuttal.
 - Restricting the use of secret evidence.
 - Amend the criminal material support statutes to require proof of specific intent to further an organization’s unlawful activities before imposing criminal liability. Amend 18 U.S.C. § 2339A and 18 U.S.C. § 2337B provisions, which punish

support to a designated terrorist group regardless of whether the person providing that support intended, or in fact did, further the group's violent activities, to instead require that the government prove that individuals charged specifically intended to further terrorist activity when they provided humanitarian assistance.

- Remove oversight and impermissibly vague language, such as "training," "service," and "expert advice and assistance," from the definition of material support. Alternatively, amend 18 U.S.C. §§ 2389A(b)(1)-(b)(3) and 18 U.S.C. § 2389B(a)(1) to clarify this impermissibly vague language and insert a specific intent requirement into the definition of the provision of training, service, and expert advice or assistance.
- Expand the humanitarian exemptions to the material support statute beyond medicine and religious materials. Broader material support exceptions should include: medical equipment and services, civilian public health services, legal services, food, water, clothing, and shelter to noncombatants. Human rights training and conflict resolution services should be entirely exempted.
- Amend 50 U.S.C. §§ 1702(a)(1)(B) (as amended by Section 106 of the USA PATRIOT Act), striking language that authorizes OFAC blocking orders to freeze an organization's assets pending investigation.²⁰ Alternatively, build in due process protections for charities under investigation (i.e. whose assets are frozen and seized pending designation).
- Require periodic OFAC reports to Congress, to promote transparency and accountability.
- Conduct Congressional oversight hearings on terrorism financing policies as applied to the charitable and nonprofit sector. Include

testimony from representatives of the charitable and Muslim communities in order to more accurately and completely evaluate the impact of the Department of Treasury's counterterrorism procedures.

- Request that the Government Accountability Office (GAO) conduct an investigation of frozen charitable funds to determine how much is currently blocked, what the original intent of donors was by identifying and locating managers of the organizations involved, what barriers exist to transferring the funds for charitable purposes, and what that law provides for the eventual disposition of the funds.
- Pass the End Racial Profiling Act.
- Establish a legislative charter for the FBI, limiting the FBI's investigative authorities by requiring a factual predicate sufficient to establish reasonable suspicion before intrusive investigative techniques may be authorized, and prohibiting investigations based upon the exercise of First Amendment rights.
- Enact legislation to de-fund any FBI activities that chill the free exercise of First Amendment rights.

vii. *Regarding Proposals to Create a White List of Approved Charities*

While some individuals and groups have called for a government-created white list of approved charities, the ACLU is opposed to such a list. A white list would be deeply problematic, as it would be open to potential discrimination and abuse by government agencies, could be based against some organizations and in favor of others based on religion or other factors, and would exclude smaller groups without the resources to get on the list. The executive director of KinderUSA told the ACLU, "I am totally opposed to the white list proposal. A white list, to me, is the same as a blacklist. If you start creating a white list, you'll be creating a blacklist." Laila al-Marghali, president of the board of directors of KinderUSA, "If you don't get on the white list then people will say we can't give to you, so the government would be able to give legitimacy to those groups [on the list]. If you're not on the list then would that mean that you were engaged in criminal activities?"²¹⁻²³

Many individuals interviewed are identified in this report with pseudonyms, in the form of names and initials which do not reflect real names, upon their request to ensure there is no retaliation against them. Where interviewees requested that a pseudonym be used, we have indicated so in the relevant citations.

II. Methodology

The ACLU conducted 120 in-person and telephone interviews for this report. This report is based on 115 interviews with American Muslims, including Muslim community leaders and American Muslims directly affected by the U.S. government's policies regarding Muslim charities and Muslim charitable donors. The ACLU conducted interviews with 81 American Muslims in Texas in May, July, and August 2008; interviews with 33 American Muslims in Michigan in November 2008 and March 2009; and six telephone interviews with individuals in other locations. The ACLU also interviewed two former Department of Treasury officials.

To research American Muslims' charitable giving, the ACLU conducted interviews with observant Muslims who are of the age and income level to pay Zakat. The ACLU conducted these interviews with American Muslims who represent a cross-section of the Muslim community in the Dallas/Fort Worth and Metro Detroit area, including African-American Muslims, converts to Islam, and Muslim Americans of Afghan, Bangladeshi, Chinese, Egyptian, Emirati, Indian, Indonesian, Iranian, Pakistani, Kuwaiti, Lebanese, Moroccan, Palestinian, Pakistani, Somali, Syrian, and Turkish origin. Effort was made to interview women and men, young and old, U.S.-born and immigrant, Sunni and Shia, and Muslims of varying income levels.

The ACLU also interviewed the executive directors of four operating Muslim charities, attorneys representing Muslim charities, imams and other Muslim community leaders, and individuals named in unindicted co-conspirators in the Holy Hand Foundation criminal case.

The ACLU conducted 115 interviews with Muslim community leaders and American Muslims directly affected by the U.S. government's policies regarding Muslim charities and Muslim charitable donors.

III. Legal Framework

Terrorism financing laws cover: (i) criminal provisions regarding the support of terrorism by a terrorist organization, and (ii) schemes under which the government may designate organizations as terrorist through an administrative action in which the government shuts organizations down, often without allegations of criminal wrongdoing (criminal charges are not always brought in such cases). These regimes raise different issues, detailed below, but have in common a lack of fundamental due process safeguards and impose guilt by association.

Terrorism financing laws are contained in the federal criminal code, immigration code, and other statutes.¹⁴ These laws authorize U.S. officials to designate groups or individuals as terrorist and punish material support to them. The legal framework for these laws includes the Antiterrorism and Effective Death Penalty Act (AEDPA), known as the criminal material support statute, and the Emergency Economic Powers Act (EIEPA), which authorizes the freezing of assets of "specially designated terrorist" organizations or individuals. After the September 11, 2001 attacks, the USA PATRIOT Act expanded some of the material support for terrorism provisions. This section of this report outlines these statutes and their provisions, but it does not address in detail the provisions regarding material support contained in the federal immigration law. While the scope of this report, it should be noted that under these expansive provisions, non-citizens can be denied entry to the United States or deported for having provided material support not only to organizations designated as terrorist, but also to organizations that have never been designated.¹⁵

The laws prohibiting material support for terrorism are in desperate need of re-evaluation and reform. These laws punish wholly innocent assistance to arbitrarily blacklisted individuals and organizations, undermine legitimate humanitarian efforts, and can be used to prosecute innocent donors who intend to support only lawful activity through religious practice, humanitarian aid, speech, or association.

The laws prohibiting material support for terrorism are in desperate need of re-evaluation and reform. Intended as a mechanism to stave off terrorist organizations of resources, these overbroad statutes instead effectively criminalize guilt by association and do not provide guidance about what is and is not prohibited. Because the material support statutes punish material support without regard for the intent or character of the support provided, these statutes punish wholly innocent assistance to many of the legitimate humanitarian efforts, and can be used to prosecute innocent donors who intend to support only lawful activity through religious practice, humanitarian aid, speech, or association.

The laws prohibiting material support for terrorism punish wholly innocent assistance to arbitrarily blacklisted individuals and organizations, undermine legitimate humanitarian efforts, and can be used to prosecute innocent donors who intend to support only lawful activity through religious practice.

The terrorism financing laws also provide federal officials with wide discretion in choosing groups or individuals for designation, empower the Department of Treasury to seize the assets of charitable organizations with no notice and on the basis of secret evidence, and contain inadequate procedures for challenging designations. The laws allow the seizure and indefinite freezing of a charitable organization's assets without notice and without a judicial review.

Although the need to ensure that humanitarian aid and charitable donations are not diverted to support terrorism is a real and valid counterterrorism issue, both the material support statutes and the government's interpretation of them raise constitutional and human rights concerns. As detailed in section A of this report, the material support for terrorism statutes are broad in scope and include provisions that protect freedom of religion and association.

a. Antiterrorism and Effective Death Penalty Act (AEDPA)

The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA, 18 U.S.C. § 2339), passed after the Oklahoma City bombing, criminalizes the provision of material support to terrorism or terrorist organizations.³⁶ Title 18 U.S.C. § 2339A makes it a federal crime to knowingly provide material support or resources in preparation for or in carrying out specified crimes of terrorism,³⁷ and 18 U.S.C. § 2339B outlaws the knowing provision of material support or resources to any group of individuals the Secretary of State has designated a "foreign terrorist organization" (FTO).³⁸

AEDPA also amended the Immigration and Nationality Act (INA) to give the Secretary of State almost unfettered discretion to designate FTOs.³⁹ The Secretary of State may designate an organization as an FTO if she finds that the organization is foreign, that it engages in or retains the capacity and intent to engage in terrorist activities, and that its activities threaten the national defense, foreign relations or economic interests of the United States.⁴⁰ U.S. citizens can be criminally prosecuted for giving to an FTO without any intent to further the illegal aims of the FTO. Further, the material support statute prohibits the intent to challenge in her own person the constitutionality of the FTO to which she is accused of providing material support—even

though the blacklisting is what renders her otherwise constitutionally-protected activity criminal.⁴¹

The USA PATRIOT Act of 2001 and the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA) amended AEDPA. Substantial expansions of IRTPA and the USA PATRIOT Act law were made in the USA PATRIOT Act, which expanded AEDPA's material support provisions, especially outlined in 1996, to include those who provide "expert advice or assistance" and to increase penalties for violations of the statute.⁴² Subsection B below outlines these amendments to AEDPA in more detail.

As amended, AEDPA defines material support very broadly. The material support statute currently defines material support as: "any property, tangible or intangible, or service, including currency or monetary instruments or financial securities, financial services, lodging, training, expert advice or assistance, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel (one or more individuals who may be or include oneself), and transportation, except medicine or religious materials."⁴³ The statute not only bans material objects, but also the provision of "service," "training," "personnel," and "expert advice or assistance."⁴⁴

As amended, the material support law punishes support to a designated group regardless of whether the person providing support intended to further the group's terrorist activities.⁴⁵ In fact, the material support statute is so broad that even humanitarian aid intended to discourage terrorist activities can be a crime under the material support law.

b. Expansion of Prohibited Material Support

Section 805 of the 2001 USA PATRIOT Act expanded the already overbroad definition of "material support and resources" to include "expert advice or assistance," and Section 810 increased penalties for violations of the statute.⁴⁶ "Alter-legal Challenges" were brought and through the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA), Congress narrowed these provisions in 2004 to require that a person have knowledge that the organization is an FTO or that the organization has engaged or engages in terrorism.⁴⁷

However, the statute still does not require the government to prove that the person specifically intended for his or her support to advance the terrorist activities of the designated organization,⁴⁸ and some lower courts have held that specific intent is not required for liability to attach under the statute.⁴⁹ The government has argued that those who provide support to designated organizations can run afoul of the law even if they oppose the unlawful activities of the designated group, intend their support to be used only for humanitarian purposes, and take precautions to ensure that their support is indeed used for these purposes.⁵⁰ This broad interpretation of the material support prohibition effectively prevents humanitarian organizations from providing needed relief in many parts of the world where designated groups control schools, orphanages, medical clinics, hospitals, and refugee camps.⁵¹ In 2004, Congress passed the Patriot Act reauthorization, making the material support provisions permanent.⁵²

The material support statute contains no general exception for humanitarian assistance. The only exceptions to the ban on "material support or resources" provision are for medicine and religious materials.⁵³ Moreover many benign activities that are essential for humanitarian aid and that should be labeled material support, including provision of food aid, latrines, blankets, clothing, or tents,

Other activities that arguably fall within the definition of material support include teaching English to nurses, public health experts' advice on creating clean water supplies in a refugee camp, conflict resolution programs, and doctors' training on how to treat, treat, and contain contagious diseases. Under the material support statute, an organization can provide humanitarian aid, but clearing away a path to take the aid to the needy. The material support provisions are so broad that, in theory, even the International Committee of the Red Cross could be prosecuted under the material support law for the aid it provides.

The laws leave open the possibility that donors to Muslim charities may be exposed to criminal liability for their donations made with the good-faith intention to support humanitarian aid.

Examples of how far the material support statutes can go are legion. President Clinton used IEEPA to label a U.S. citizen, Muhammad Salah, a "specially designated terrorist" without hearing, notice, or trial, and without any definition of the label imposed on him. Under the law, it is a crime for anyone in the United States to provide medicine to him, give him a loaf of bread, hire him for a job, deliver a paper to him, or do business with him.⁵⁴ If the material support law were literally applied and enforced, Salah would have to get a special license to cross the border to get to his country. The criminal material support status (AEDPA § 2339B) was sentenced to 155 years in prison for smuggling cigarettes across state lines and donating \$5,500 to Hezbollah, while his compatriots who engaged in the same smuggling but did not make the donation received sentences of about five years each.⁵⁵



KindnessUSA, a Texas-based Muslim charity, provided contingency food distribution to children during and after the December 2009 January 2010 war in Gaza. The material support statute contains no general exception for humanitarian aid, and the statute's broad definition of material support (www discourage and undermine the aid work of humanitarian organizations and cast lives. (KritikUSA)

Further, any suggestion that the government would not use the material support statutes to prosecute purely First Amendment-protected speech is belied by the fact that it already has. In a most notorious example, the government brought charges against University of Idaho Ph.D. candidate Saif Omar Al-Hussayen, a Muslim charity lobbyist, for allegedly soliciting a six-week criminal trial for North America led to a six-week criminal trial for materially supporting terrorism. The prosecution argued that by running a website that had links to other websites that carried speeches advocating violence, Al-Hussayen provided "expert assistance" to terrorists. A jury ultimately acquitted Al-Hussayen of all terrorism-related charges.⁵⁷

Such unfair and counterproductive consequences are a direct result of the overbroad and constitutionally vague definition of material support in the statute. The First Amendment protects an individual's right to join or support political organizations and to associate with others in order to pursue common goals. As a result, the government cannot punish mere membership in or political association with disfavored groups—even those that engage in both lawful and unlawful activity—without the strictest safeguards. The material support provisions impermissibly criminalize a broad range of First Amendment-protected activity, both as a result of their sweeping, vague terms and because they do not require the government to show that a defendant intends to support the criminal activity of a designated FTO. Courts have held that vague FTO lists should be invalidated by these reasons: "(1) lists should be invalidated if they are too broad and leave too much discretion to the government to enforce laws; (2) to avoid any chilling effect on the exercise of First Amendment freedoms; (3) material support prohibitions against 'training,' 'services,' and 'expert advice and assistance' fail each of these three standards.

In *Humanitarian Law Project v. Mukasey*, a group of organizations and individuals seeking to support the nonviolent and lawful activities of Kurdish

and Tamil humanitarian organizations challenged the constitutionality of the material support provisions on First and Fifth Amendment grounds.⁵⁸ They contended that the law violated the Constitution by imposing a criminal penalty for association without requiring specific intent to further an FTO's goals and by punishing speech that falls in its definition of "material support" as "expert advice" were impermissibly vague. On December 10, 2007, the U.S. Court of Appeals for the Ninth Circuit found the terms "training" and "service," and part of the definition of "expert advice and assistance" unconstitutionally vague under the Fifth Amendment.⁵⁹ On January 5, 2009, the full ten-panel U.S. Court of Appeals for the Ninth Circuit affirmed and refused the government's request to reconsider the December 2007 ruling by a three-judge panel.⁶⁰

The material support provisions also impose guilt by association in violation of the Fifth Amendment. Due process requires the government to prove personal guilt—that an individual specifically intended to further the group's unlawful ends—before criminal sanctions may be imposed.⁶¹ Even with the IRTPA amendments, the material support provisions do not require specific intent. Rather, the statutes impose criminal liability based on the mere knowledge that the group receiving support is an FTO or engages in terrorism. Indeed, a Florida district court judge in *United States v. Al-Arian* warned that under the government's reading of the material support statute, "a cab driver could be guilty for giving a ride to an FTO member to the UN."⁶² And these constitutional deficiencies are only exacerbated by the inherent discretion these laws give the Secretary of State to designate groups that lack of due process afforded to groups that wish to challenge their designation, as detailed in section IV of this report.

Because the criminal material support provisions still do not require the government to prove that the person specifically intended for his or her support to advance the terrorist activities of the designated organization, the laws leave open the possibility

that donors to Muslim charities may be exposed to criminal liability for their donations made with the good-faith intention to support humanitarian aid, as long as he or she provides the support knowing that the recipient organization has been designated as a terrorist organization or that the organization has been or is involved in "terrorist activity."⁶⁴

Reagan-era Assistant Secretary of the Treasury, Paul Craig Roberts, told the ACLU, "Even if the organization is involved in some wrongdoing the people making the contributions can't know that. Our legal system used to be based on the notion

that there can be no crime without intent, but [the amended law] causes anyone who gives out of the sympathy and the goodness of their own heart to be considered guilty."⁶⁵

Following his last official mission to review U.S. counterterrorism practices, in November 2007 the UN Special Rapporteur on Human Rights while Countering Terrorism condemned the expansion of the material support law, noting, "The USA PATRIOT Act of 2001...expanded [the definition of terrorist activity] beyond the bounds of conduct which is truly terrorist in nature, in particular in respect of

the provision of material support to terrorist organizations. The definition captures, for example, the providing of funds to a charity organization which at the time was not classified as a terrorist organization.⁴⁴

"How can you punish me for giving today to an organization that is designated five years from now?"

According to Laila al-Marayati, former presidential appointee to the U.S. Commission on International Religious Freedom and a former member of the State Department's Advisory Committee on Religious Freedom Abroad who serves on the board of directors of a Muslim charity.

The Patriot Act leaves open the question of whether the government can go after a donor or not. And the government has the right to do that retroactively. How can you punish me for giving today to an organization that is designated five years from now? If that uncertainty—if people know that or think about that—they will say forget paying Zakat, because I cannot predict the future, because I will be or could be punished for something somebody does five years from now.⁴⁵

Imad Hamad, regional director of the American Arab Anti-Discrimination Committee (AACD) of Michigan, noted "It would be totally different if the entity is illegal and unlawful—then punish donations to those organizations. But if the government can prosecute donations when the charity is legal and lawful, then it opens the door to selective prosecution."⁴⁶

In interviews with the ACLU, Muslim donors repeatedly criticized the material support provisions that expose them to retroactive criminal liability for

support for terrorism for past donations to legal Muslim charities. Donors in both Texas and Michigan expressed fear that they would be criminally charged with material support for terrorism on the basis of past donations to the Holy Land Foundation for Relief and Development (HLF) when it was the largest U.S.-based Muslim charity. HLF had been legally operating for over a decade before its designation as a terrorist organization, and its designation of terrorism in December 2001, and was the subject of a federal terrorism report in section V of this report. One former HLF donor said, "I am especially scared because of my [past] donation to HLF. I'm sure they've seized all the donation records, and they know I've donated to HLF."⁴⁷ Another donor explained:

I chose HLF because I trusted it. I sponsored a three-year-old child living in a refugee camp in the Gaza Strip. I sponsored that girl until the HLF closed in 2001, from 1992 to 2001.... This is something that I am worried about. It is on my mind that if the HLF defendants are found guilty, what is to stop the government from going after the people who gave to the organization? Is the government going to look at the people who supported the organization for 10 years as suspects? I don't see any wrongdoing in what I did, but this is a worry that I have: that we will be suspects even though the organization was legal at the time, and the dollar amount was only \$400, \$700 a year.... [I] wonder what will be the charges and punishment against people who donated to an organization found to be a terrorist organization. I am afraid that this is something that will come back to me, because I am somebody who donated all these years.⁴⁸

Section VIII of this report describes in more detail Muslim donors' fears of retroactive criminal liability for their donations to legal Muslim charities and the consequential chilling effect on their charitable giving and free and full exercise of religion.

c. International Emergency Economic Powers Act (IEEPA) and Executive Order 13224

The federal government's statutory and administrative authority to freeze assets is defined in the International Emergency Economic Powers Act (IEEPA) and Executive Order 13224 (E.O. 13224). In 1977, Congress enacted IEEPA to amend the Trading with the Enemy Act (TWEA) of 1917, in order to clarify and limit presidential powers with respect to embargoes and sanctions against foreign nations during times of national emergency.⁴⁹ These statutes authorize the President to impose economic sanctions during wartime or times of national crisis. Historically, Presidents exercised their authority under IEEPA against foreign governments such as Sudan, Burma, Libya, and Iran, and against individuals and entities only if they were citizens of sanctioned foreign nations.⁵⁰

Executive Order 13224 confers broad powers on the Secretary of Treasury and Secretary of State, contains vague criteria for designation, and lacks any evidentiary standard for designation.

To invoke the authority granted under IEEPA, the President must declare a national emergency, which requires an "unusual and extraordinary" threat to national security, foreign policy, or the U.S. economy existing wholly or substantially outside the United States. When these criteria are met, the President or a designated agency has the power to sanction organizations, individuals, or foreign nations identified as contributing to that threat. IEEPA gives the President authority to regulate, prohibit or prevent any form of economic transaction that provides services to benefit terrorists, by authorizing the President, upon declaration

of a national emergency, to "investigate, block, regulate, direct and compel, nullify, void, prevent or prohibit, any holding, use, transfer, or transactions involving any property in which a foreign country or national thereof has any interest by any person, subject to the jurisdiction of the United States."⁷⁴

In 1995, President Bill Clinton extended IEEPA's use beyond foreign countries by issuing Executive Order 12947, which designated certain terrorist organizations as "specially designated terrorists" (SDTs), thereby blocking all of their property and making it illegal to knowingly engage in transactions of any kind with designated organizations.⁷⁵ The order prohibited all transactions and dealings with designated organizations, including making and receiving contributions of funds, goods, and services.

Shortly after the terrorist attacks of September 11, 2001, President George Bush issued E.O. 13224, which provided for the designation of 27 "specially designated global terrorists" (SDGTs) and authorizes the Secretary of Treasury and the Secretary of State to designate more organizations and individuals on the Specially Designated Global Terrorist (SDGT) list.⁷⁶

E.O. 13224 confers broad powers on the Secretary of Treasury and Secretary of State, contains vague criteria for designation, and lacks any evidentiary standard for designation. The order called for the blocking of assets for (1) the 27 organizations and individuals on the annex list, (2) any individuals or entities that are owned or controlled by any of the 27, (3) any organizations or individuals who are found to be "owned or controlled by, or to act for or on behalf of," an organization or individual on the SDGT list.⁷⁷ The order also allows the Secretary of Treasury to block the assets of any organization or individual found to have assisted in, sponsored, or provided financial, material, or technological support for, or financial

or other services for, acts of terrorism or organizations or individuals on the SDGT list (including organizations and individuals subsequently subjected to asset blocking under the order). Lastly, the order allows the Secretary of Treasury to block the assets of any organization or individual found to be "otherwise associated with organizations or individuals on the SDGT list, including organizations and individuals subsequently subjected to asset blocking under the order."

The order also created the Specially Designated Nationals and Blocked Persons (SDN) list, an umbrella list compiled by the Department of Treasury's Office of Foreign Assets Control (OFAC) that includes both SDGTs and other organizations and individuals named under other sanctions programs.

The Treasury Department may impose virtually all the consequences of SDGT designation—including freezing an organization's assets indefinitely and criminalizing all transactions with it—without designating the organization, but simply by opening an investigation, or by simply opening an investigation into whether it should be designated.⁷⁸

IEEPA is administered by OFAC, an agency that also administers and enforces international trade and financial sanctions and money laundering laws and has the ability to strip assets from banks, companies, foreign nations and drug kingpins. IEEPA does not identify the standard of evidence required for OFAC to designate an organization. To designate an organization, OFAC has taken the position that it only needs to have a reasonable suspicion that the organization is providing "financial, material, or technological support for, or financial or other

services to an SDGT or is "otherwise associated" with an SDGT.⁷⁹

The consequences of designation include the seizure and freezing of all financial and tangible assets, as well as significant civil and criminal penalties. As explained in section IV of this report, IEEPA effectively allows the government to shut down an organization's operations and freeze out its assets without any notice or hearing and without any judicial review. It provides that it can be used in secret and without the presence of the charity (or *parce and in camera*).⁸⁰

A provision of the USA Patriot Act goes even further and authorizes OFAC to freeze an organization's assets without designating it or otherwise finding any wrongdoing, based on nothing more than OFAC's assertion that the entity is under investigation. Pursuant to an amendment to IEEPA made by the USA PATRIOT Act, the Treasury Department may impose virtually all the consequences of SDGT designation—including freezing an organization's assets indefinitely and criminalizing all transactions with it—without designating the organization, but simply by opening an investigation into whether it should be designated.⁸¹ As detailed in section IV of this report, IEEPA does not specify any standard of suspicion necessary for such a freeze. Pending investigation, does not require that the entity be provided with notice or a meaningful opportunity to contest the freeze, requires no judicial approval, and contains no time limit on how long a freeze pending investigation may last.

d. OFAC's Anti-Terrorist Financing Guidelines / Voluntary Best Practices for U.S.-Based Charities

The Department of Treasury also has created voluntary guidelines for charities. OFAC created the *Anti-Terrorist Financing Guidelines: Voluntary Best Practices for U.S.-Based Charities* in 2002. Last updated in 2006, OFAC created the guidelines to assist charities to protect themselves from unintended diversion of charitable support to terrorist organizations.⁸² Both Muslim and non-Muslim charities have resoundingly criticized the Guidelines as unduly burdensome and largely ineffectual.

Charities and other organizations in the nonprofit sector have criticized the Guidelines as imposing substantial, and inefficient, administrative burdens on charitable organizations with minimal success at stopping the flow of money to terrorist charities, and have called for a new voluntary best practices approach. The Guidelines are criticized for promoting inappropriate, ineffective, inefficient and impracticable practices that fail to prevent the diversion of charitable funds to terrorism and chill charitable operations.⁸³ The Guidelines, for example, recommend that organizations complete a checklist of information searches on each of their grantees, including searches of publicly available information about the grantees' employees.⁸⁴ Critics charge that this "list checking" and extensive search of publicly available documents will produce less information about an organization's activities than will the networking and consultations that organizations previously used.⁸⁵ For small organizations, this list-checking procedure also may be prohibitively expensive or logistically impossible, and recommended internet searches and even searches of public records may produce false information from organizations actually involved in terrorist activity.⁸⁶

Although the Guidelines state that they "are voluntary and do not create, supersede, or modify current or future legal requirements," some charities and foundations have said they view them as de facto legal requirements, because they fear that choosing not to follow them will invite government

Charities and other organizations in the nonprofit sector have criticized the Guidelines as imposing substantial, and inefficient, administrative burdens on charitable organizations with minimal success at stopping the flow of money to terrorist activities.

scrutiny.³⁵ A recent report by government watchdog organization OMB Watch and philanthropic network Grantmakers Without Borders noted, "Despite their voluntary label, nonprofits feel tremendous pressure to utilize these tools, largely because they were issued by the same agency that can seize and freeze nonprofits' assets at any time."³⁶ However, organizations and their donors are not assured that, by complying with the Guidelines, the organization will avoid government investigation or a blocking order.³⁷

The ACLU spoke with the leaders of several Muslim charities who criticized the voluntary guidelines for being "vague, impracticable, and imposing heavy administrative burdens. According to the executive director of KinderUSA, "The voluntary guidelines are absurd and mean absolutely nothing, you're kidding. You do and damned if you don't; even if we let the guidelines go, the government can still shut you down. The U.S. Treasury Department officials stated last that the guidelines are no guarantee for charities to continue operations. So KinderUSA follows the guidelines, because we have no choice." She added, "Administratively it is an incredible burden. The guidelines stipulate that we must vet every beneficiary, but we feed 20,000 to 30,000 children during Ramadan alone. How can you vet a child?"³⁸

Laila al-Marayati, president of the board of directors of KinderUSA, similarly told the ACLU, "I think the voluntary guidelines are cumbersome and unnecessary. It was clear that the industry itself, philanthropy, has had provisions in place to make sure money goes to where it is intended. They focus on money not going to terrorism, but to me it is the same to ensure that the money doesn't go to organized crime—it is the same basic approach to ensure the money goes where it is supposed to go. The guidelines create a lot of confusion and open things up for abuse."³⁹

IV. Lack of Due Process to Protect Against Mistake and Abuse

In a study on terrorism financing, the 9/11 Commission staff reported that the application of U.S. terrorism financing laws and policies to charities raises "substantial civil liberty concerns."¹⁵ Indeed, the counterterrorism laws deny charities due process, exposing charities to mistake and abuse. The laws prohibiting material support for terrorism provide federal officials with wide discretion to investigate and designate charities. To seize the assets of charitable organizations with no notice or hearing and on the basis of secret evidence, and contain inadequate procedures for challenging designations. The laws also allow the seizure and indefinite freezing of a charitable organization's assets "pending investigation," without notice, charges, opportunity to respond, or meaningful judicial review.

The counterterrorism legal framework is inherently vulnerable to mistake and abuse, and charities run the risk of irreversible harm on the basis of unsubstantiated evidence and without even basic due process protections. In fact, criminal prosecutions of Muslim charity leaders and associates, and government oversight review of some cases, have exposed flaws in evidence used to designate and shut down Muslim charities.

The U.S. government has also smeared the reputations of some Muslim charities, Muslim community organizations, and associates of Muslim charities without affording these organizations and individuals a day in court or any other opportunity to clear their names. In one material support prosecution against a Muslim charity, government lawyers

named individuals and organizations, including some of the country's largest mainstream Muslim organizations, as unindicted co-conspirators in the criminal case. Government lawyers made these inflammatory charges against individuals and organizations that have not been charged with any crime, without affording the named individuals and groups the ability to defend themselves or clear their names. Federal agents also have publicly raided or investigated Muslim charities, substantial numbers of which have been shut down by the government without even going through the designation process or indicating the charity for any crimes.

a. Denial of Due Process in Blocking Assets Pending Designation

A USA PATRIOT Act provision expanded the government's authority to seize all of an organization's assets, by authorizing freezes "pending investigation" to determine whether the entity should be designated.¹⁶ The statute sets forth no substantive requirements for the government to justify the designation is permitted, requires no notice or opportunity

The counterterrorism legal framework denies charities due process, exposing charities to mistake and abuse.

to respond, and sets no time limit on the freeze. A 9/11 Commission staff report on terrorism financing warned of the Department of Treasury Office of Foreign Assets Control's (OFAC) authority to freeze organizations' assets pending investigation:

IEEPAs' provision allowing blocking "during the pendency of an investigation" is a powerful weapon with potentially dangerous applications when applied to domestic institutions. This provision lets the government shut down

The counterterrorism legal framework is inherently vulnerable to mistake and abuse, and charities run the risk of irreversible harm on the basis of unsubstantiated evidence and without even basic due process protections.

an organization without any formal determination of wrongdoing. It requires a single piece of paper, signed by a midlevel government official. Although in practice a number of agencies typically review and agree to the action, there is no formal administrative process, let alone any adjudication or guilt.⁷

The 9/11 Commission staff found OFAC's use of blocking provisions in the USA PATRIOT Act that allow blocking of assets during investigatory, harshly criticized the Reagan administration, harshly criticized the provisions permitting blocking of assets pending investigation. He told the ACLU, "Treasury officials never actually have to produce any evidence. It's just their assertion, and they can freeze or seize assets.... It's the total unjustified seizure of assets. The Treasury Department doesn't need any evidence when they freeze assets. It's just their assertion for the sake of any American concept of civil liberties or due process. The whole thing reeks of monopoly from start to finish, this arbitrary ruling of institutions and organizations."¹⁰

Charities' legal challenges of blocking orders pending investigation have only recently yielded some successes. A federal court in Portland, Oregon, ruled for the first time, on November 6, 2008, that an order freezing an entity's assets is a seizure under the Fourth Amendment.¹⁰ It found that the freeze deprived Oregon-based Muslim charity Al-Haramain Islamic Foundation-USA (AHIF) of any opportunity to use its assets for an extended period (over four years at the time of the decision), and that therefore the seizure would have to satisfy Fourth Amendment scrutiny. The court ordered briefing on this issue, to determine whether the seizure of the charity's assets complied with the basic constitutional requirements enshrined in the Fourth Amendment. The court also found that OFAC had acted in an arbitrary and capricious manner in denying AHIF the right to use any of its blocked assets to defend itself, since OFAC imposed an arbitrary cap on attorney fees.

Notably, since the 9/11 Commission conducted its inquiry, one interim OFAC blocking order, against the Ohio-based charity KindHearts for Charitable Humanitarian Development (KindHearts), has lasted over three years. OFAC effectively closed down the charity on the basis of a letter that states merely that KindHearts is under investigation. In the years since the government froze KindHearts' assets pending investigation, it has neither instituted criminal proceedings nor formally designated KindHearts as a "specially designated global terrorist" (SDGT).

To this day, OFAC has not provided KindHearts with an adequate statement of the basis for the seizure of its assets nor its provisional designation, has impermissibly relied on classified information and hearsay that denies KindHearts a meaningful opportunity to defend itself, and has failed to pursue alternative procedures that could provide KindHearts a fair opportunity to defend itself without loss to the security interests of the United States. The Treasury Department further undermined KindHearts' ability to defend itself by restricting its ability to employ attorneys to review its records and by restricting KindHearts' records and unreasonably restricting KindHearts' access to them.



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220
BLOCKING NOTICE

FAC No. SDCR-258248

KindHearts for Charitable Humanitarian Development, Inc.
3450 West Central Avenue, Suite 360
Toledo, OH 43605

Gentlemen:

You are hereby notified that all property and interests in property of KindHearts for Charitable Humanitarian Development, Inc. ("KINDHEARTS"), including its U.S. representative office and all other offices worldwide, are blocked pending investigation into whether KINDHEARTS is subject to designation pursuant to Executive Order 13224 (66 FR 49079), issued by President Bush on September 23, 2001 (the "Order"), for being controlled by, acting for or on behalf of, assisting in or providing financial or material support to, and/or otherwise being associated with Hamas. This blocking is pursuant to the authorities granted by Hamas under the Emergency Economic Powers Act, 50 U.S.C. §§ 1701-06 (170629), and the International Security and Counterterrorism (USA PATRIOT) Act of 2001, Pub. L. No. 107-56, 115 Stat. 272 (2001), the Order and 31 C.F.R. Part 594.

A copy of the February 2004 Office of Foreign Assets Control blocking order authorizing the seizure of KindHearts' assets pending investigation. In the over three years since the government froze KindHearts' assets, the Treasury Department has neither instituted criminal proceedings nor formally designated the charity.

anybody without following due process by presenting the evidence and having it heard in court. Otherwise it's just hearsay or just "the organization is guilty because the Treasury said they are a money-laundering organization for terrorism." Where's the basis, where's the evidence?¹¹¹

c. Limited Judicial Review for Designations

IEEPA and E.O. 13224 do not require judicial review of designations. In practice, charities generally are able to challenge designation only after the fact. On review, the government may present classified evidence to the judge in secret, denying designated organizations a meaningful review or challenge. In the past, the government has used this tactic to force the courts to review or challenge the Treasury's designation of a highly defensible charity. In the past, courts have nearly always upheld the Treasury's designation actions and powers.¹¹²

Furthermore, before a designated organization can pay an attorney to represent it, the attorney must apply for and obtain a license from OFAC. Designated organizations have no automatic right to use blocked funds to hire defense counsel, but rather must obtain a separate OFAC license first. Although OFAC has sometimes provided licenses in the past to designated charities to hire counsel or use blocked funds for legal fees, more recently OFAC has denied license applications, substantially limiting organizations' ability to obtain legal representation and challenge their designations. Moreover, OFAC has arbitrarily capped attorneys' fees in some cases.

In a report on terrorism financing, the 9/11 Commission staff expressed concern that judicial review for designations is sharply limited, noting, "A designated entity can challenge the designation in court, but its chances of success are limited. The

legal standard for overturning the designation is favorable to the government, and the government can rely on classified evidence that it shows to the judge but not defense counsel, depriving the designated entity of the usual right to confront the evidence against it."¹¹³

In the period after September 11, courts generally upheld Treasury's designation actions and powers. In the past, the government has used this tactic to force the courts to review or challenge the Treasury's designation of a highly defensible charity. In the past, courts have nearly always upheld the Treasury's designation actions and powers.¹¹⁴ In June 2002, Illinois-based Muslim charity Global Relief Foundation (GRF) challenged the government's authority to freeze its assets pending investigation. On December 14, 2001, federal agents had raided GRF's offices in Bridgeport,

Illinois, in a warrantless search and seizure under an emergency exception provision in the Foreign Intelligence Surveillance Act (FISA), nearly two dozen officers removed computers and servers, modems, a cellular phone, hand-held radios, video and audio tapes, cassette tapes, computer diskettes, a credit card printer, foreign currency, U.S. mail, photographs, receipts, documents, and records. OFAC issued a "Blocking Notice" to GRF, which froze, until further notice, the funds, accounts, and business records in which the organization had an interest.¹¹⁵ Federal agents invoked IEEPA as amended by the Patriot Act, as well as E.O. 13224, to justify the seizure of assets pending investigation.

The U.S. District Court for the Northern District of Illinois dismissed GRF's argument by holding that Section 5 of E.O. 13224 gave the President broad powers to conduct "such other actions to be consistent with the national interests of the United States," which it interpreted to include "blocking the assets of GRF during the pendency of its investigation."¹¹⁷ GRF appealed the decision in the U.S. Court of Appeals for the Seventh Circuit. However, days before oral arguments, on October 18, 2002, OFAC officially designated GRF an SDGT, rendering GRF's arguments challenging the seizure of its assets pending investigation moot. Consequently, the court did not address GRF's arguments on the matter and upheld the denial of preliminary injunctive relief, affirming the district court's findings on all other matters.¹¹⁸

On December 30, 2004, The Islamic American Relief Agency-USA (IARA) filed suit seeking a preliminary injunction to challenge the government's authority to designate it, freeze its assets pending investigation, and the challenge to the U.S. District Court for the District of Columbia granted the government's motions to dismiss all of IARA's charges, finding that the search and seizure as well as the designation were constitutional and

legal under the expansive executive authority of E.O. 13224 and IEEPA.¹¹⁶ Notably, the court indicated that because IEEPA was relevant only in the case of a national emergency, no due process is afforded designees. The court noted that IARA "could challenge the blocking order by writing a letter to the Director of the OFAC," although such a letter was impossible for IARA to formulate, as it did not know the allegations against it. IARA was not permitted to see the affidavits supporting the search warrant authorizing the raid of its office, and therefore could not rebut the allegations against it. IARA appealed. The U.S. Court of Appeals for the D.C. Circuit affirmed the lower ruling in February 2007, finding that "[w]e may not substitute our judgment for OFAC's."¹¹⁷ Noting that, "[w]e owe the executive branch even more latitude than in the domestic context," the court also found that, "the unclassified record evidence is not overwhelming, but...our review—in an area at the intersection of national security, foreign policy, and administrative law—is extremely deferential."¹¹⁸

"A designated entity can challenge the designation in court, but its chances of success are limited. The legal standard for overturning the designation is favorable to the government."

d. **Flaws in Evidence Used in Designation**

In many cases, we can plainly see that certain nongovernmental organizations (NGOs) or individuals who raise money for Islamic causes...are "linked" to terrorists through common acquaintances, group affiliations, historic relationships, phone communications, or other such contacts. Although sufficient to whet the appetite for action, these suspicious links do not demonstrate that the NGO or individual actually funds terrorists and thus provide that support for disrupting action, either in the United States or abroad.

—9/11 Commission staff, *Monograph on Terrorist Financing*,¹⁷⁸

Independent U.S. government review of the designation system has exposed the flaws in the evidence the Treasury Department has used to designate U.S.-based Muslim charities. Legal proceedings, both in criminal trials and challenges to designation in federal court, have similarly revealed flaws in evidence used to designate charities. While the government is not required to disclose the evidence against an organization challenging its designation, criminal trials of charities have forced the government to disclose evidence previously kept secret during civil challenges. Further, independent review by foreign governments and courts has revealed flaws in evidence used to designate groups. Independent U.S. government review, legal proceedings, and foreign government review have revealed that the evidence used to designate Muslim charities has included news articles that in some cases do not even mention the charity in question, or intelligence that has been inaccurately and prejudicially translated. These reviews have also demonstrated the Treasury Department lacked significant evidence of terror-financing by U.S.-based Muslim charities it designated.

In an independent review of terrorism financing laws, the Government Accountability Office (GAO) found in 2005 that there is a lack of accountability for Treasury's designation and asset blocking actions.¹⁷⁹ In a report summarizing its findings, the GAO noted, "The lack of accountability for Treasury's designations and asset blocking program creates uncertainty about the department's progress and capabilities. U.S. officials will overage responsibility for the program, and the program will be hard to assess the progress, achievements, and weaknesses of U.S. efforts to designate terrorists and dismantle their financial networks as well as hold managers accountable."¹⁸⁰

While there is a lack of accountability for Treasury's designation and asset blocking actions, the limited independent review that has taken place reveals cause for concern, and highlights the need for more robust oversight and due process protections for charities. The 9/11 Commission staff found that there was a rush to designate organizations in the post-9/11 period, and as a result, the evidential basis for these designations was weak. According to the 9/11 Commission staff,

The goal set at the policy levels of the White House and Treasury was to conduct a public and aggressive series of designations to show the world community and our allies that the United States was serious about pursuing the financial targets.... As a result, Treasury officials acknowledged that some of the evidentiary foundations for the early designations were quite weak.... Some [in the government] believed that the government's haste in this area, and its preference for IEEPA sanctions, might result in a high level of false designations.¹⁸¹

One proponent of the designation process who participated in this rash of designations told the 9/11 Commission staff, "we were so forward leaning we almost felt on our feet."¹⁸²

Islamic banking and finance expert Ibrahim Warden, professor of international business at Tufts University's Fletcher School and author of *The Price of Fear: The Truth Behind the Financial War on Terror* and *Islamic Finance in the Global Economy*, told the ACLU,¹⁸³

In just about every case that I'm familiar with the kind of evidence that is used [to designate a charity] is quite poor. In most cases the government is relying on hearsay, or on the bareness to the evidence. [Islamist] cannot disclose the evidence because we have to protect our sources and our national security. But in memoirs and government reports that have come out we have seen that it is not evidence at all but just assertions by people or groups with ideological interests, or simply press clippings. So all those designations are completely unwarranted because they are not based on any kind of evidence that would hold up in court.¹⁸⁴

Warden added, "It is a bureaucratic and political ploy used by government agencies. With those charities there would be quotes by so-called 'experts on terrorism financing,' with no knowledge of the Islamic world, no language or cultural skills, just sweeping claims—and OFAC would use this as the basis for its actions."¹⁸⁵

In the case of Al-Haramain Islamic Foundation—USA (IAHIF), a federal court in Portland, Oregon, found that the record OFAC proposed to rely on in designating the charity were "press releases and newspaper articles," and "injury of the documents did not refer to IAHIF—Oregon by name."¹⁸⁶ According to the court, the evidence to be used for designation totaled about 260 pages, but "contained many documents seemingly unrelated to IAHIF—Oregon, and contained no documents that could be considered the 'smoking gun.'"¹⁸⁷

In designating Benevolence International Foundation (BIF) and Global Relief Foundation (GRF), OFAC relied on newspaper articles and other evidence

Independent U.S. government review, legal proceedings, and foreign government review have revealed

that the evidence used to designate Muslim charities has included news articles that in some cases do not even mention the charity in question, or intelligence that has been inaccurately and prejudicially translated.

that would not be admissible in a judicial proceeding, in an in-depth review of the BIF and GRF designations, the 9/11 Commission staff noted, "BIF's counsel was stumped to see that the administrative record supporting BIF's designation included newspaper articles and other rank hearsay. To BIF and GRF's counsel, experienced lawyers steeped in the federal courts' rules of evidence and due process, the OFAC designation process seemed manifestly unfair."¹⁷⁹

In its analysis of OFAC's designation of BIF and GRF, the 9/11 Commission staff concluded that "the investigation of BIF and GRF revealed little compelling evidence that either of these charities actually provided financial support to al Qaeda.... It added, "[I]ndeed, despite unprecedented access to the U.S. and foreign records of these organizations, one of the world's most experienced and best-terronist prosecutors has not been able to make any criminal case against GRF and resolved the investigation of BIF without a conviction for support of terrorism."¹⁸⁴

In a February 2005 pre-trial ruling days before the criminal trial was to begin against BIF's executives, Ehsanul Haque, the court held that "around 200 pages of newspaper articles and other materials that are not relevant to him nor probative

of the charges in the indictments), but rather are highly prejudicial matters suggesting guilt by association.¹⁴¹ U.S. District Judge Suzanne B. Conlon said that under the rules of evidence prosecutors had failed to show why many of the accusations in the indictment should be brought to a jury. In dismissing the charges against BIF, Judge Conlon held that the prosecution had failed to connect the dots to prove a relationship between BIF,

The lack of accountability for Treasury's designations and asset blocking program creates uncertainty about the department's progress and achievements. U.S. officials with oversight responsibilities need meaningful and relevant information to ascertain the progress, achievements, and weaknesses of U.S. efforts to designate terrorists and dismantle their financial networks as well as hold managers accountable."

Arnaut, and Osama bin Laden. Hours before the trial was set to begin, Arnaut pleaded guilty to one count of racketeering conspiracy.¹⁴² Judge Conlon pointed out that in the plea agreement, the government dismissed "sensational and highly publicized charges of providing material support to terrorists against Arnaut."¹⁴³ Conlon said that the government never called "Arnaut dead" as stated in the terrorism offense. Nor does the record reflect that he attempted, participated in, or conspired to commit any act of terrorism.¹⁴⁴

The criminal prosecution of Holy Land Foundation for Relief and Development (HLF) has exposed serious flaws in the evidence used to designate

the charity, including inaccurate and misleading translations of documents and tape-recorded conversations. In July 2004, before the first criminal trial of HLF,¹⁴⁵ the charity requested an investigation by the Department of Justice Inspector General, alleging that the designation of HLF relied on secret evidence that included a 34-page FBI memo that HLF said contained "infect and distort" the true basis of the evidence used to designate HLF.¹⁴⁶ An independent translating service reviewed the declassified evidence and cited 67 discrepancies or errors in translation in a single four-page FBI document.¹⁴⁷ According to the *Los Angeles Times*, other translation discrepancies in the evidence against HLF included a translation from Arabic to Hebrew to English that mistakenly translated the statement by a foundation office manager that "we have no connection to Hamas," as "charitable funds were channeled to Hamas."¹⁴⁸

In addition, the subsequent criminal trial revealed serious discrepancies between the official FBI summary of a 1996 wiretapped conversation and the actual transcripts.¹⁴⁹ The FBI surveillance summary contained inflammatory, anti-Semitic statements attributed to HLF executive director Shukri Abu Baker that were not contained in the actual verbatim transcript of the conversation.¹⁵⁰ Because defense attorneys had received declassified and partially redacted summaries representing only about 10 percent of the conversations recorded by the government, HLF defense attorneys filed requests to declassify evidence against their clients or evaluate whether additional discrepancies existed in the documents.¹⁵¹ U.S. District Judge Andrew S. Hanen said that the government's failure to disclose the transcripts of the wiretapped conversations about the defendants could require the transcripts for accuracy by comparing them to the tapes, or identify possible exculpatory information contained in the tapes of their own statements.¹⁵²

In several cases of organizations designated by the Treasury Department, foreign countries reviewed and rejected the U.S. government's claimed bases for designation, further exposing inadequacies of evidence used to designate organizations. For example, in August 2003, OFAC designated the U.K.-based Muslim charity Interpal an SDGT for allegedly supporting Hamas and pressured the U.K. government to designate the charity in the U.K. as well. U.K. regulators refused to do so because of charities in these circumstances, the inadequate agency charged with regulating the charitable sector, the U.K. Charity Commission, conducted its own investigation and concluded there was no evidence of wrongdoing.¹⁵³

The Charity Commission announced its scrutiny of Interpal revealed "no evidence to verify allegations that the charity has links to Hamas' political and militant activities," adding "[t]he American authorities were unable to provide evidence to support their allegations."¹⁵⁴ U.S. officials produced only newspaper clippings to substantiate their claims.¹⁵⁵ Simon Gillespie, director of operations at the Charity Commission, said at the time of the closing of their inquiry, "As the independent charity regulator it is our duty to look into serious allegations about charities' link to terrorism. At the same time, we must have sufficient evidence to warrant an inquiry continuing."¹⁵⁶ The Charity Commission had investigated Interpal in 1996 because of similar allegations, and similarly found no evidence to support the allegations, concluding at the time that the charity was a "well-run organization." The Chairman of Interpal's trustees, Ibrahim Hewit, said that the U.K. *Daily Telegraph* "is disappointed that the U.K. government did not designate the charity as illegitimate."¹⁵⁷ The Charity Commission concluded a third investigation into Interpal in February 2009, again clearing the charity of all accusations and concluding that the charity has committed no wrongdoing.¹⁵⁸

In another case, foreign government review of an OFAC action revealed the weaknesses in evidence used to freeze an organization's assets and proved especially embarrassing. In December 2001, OFAC froze the assets of numerous U.S. and overseas branches of Al-Barakaat, a money remittance agency used by Somalia, Canada, Luxembourg, Sweden, and other countries. The investigations of Al-Barakaat in all of these countries' governments audit found that there was no evidence linking the U.S. Treasury Department's allegations. Each government asked the United States for the secret evidence it had against Al-Barakaat, and all the "secret" evidence the Treasury Department furnished was press clippings.¹⁵⁹ According to the *Wall Street Journal*, after the Swedish government questioned the U.S. government's evidence against Al-Barakaat, "The Treasury sent Sweden 27 pages of information it said proved the case against the men. Twenty-three pages were news-release material; a packet of background documents on al Barakaat; including a statement by President Bush on al Qaeda and a transcript of a briefing led by Secretary of State Colin Powell."¹⁶⁰

In evaluating a request for the extradition of the chairman of Al-Barakaat, North America, Liban Hussein, a Canadian investigation likewise revealed that the Treasury Department lacked evidence to justify freezing Al-Barakaat's funds. The U.S. government had designated Hussein, and pursuant to United Nations (UN) regulations that allow the freezing of the assets of individuals and organizations who support terrorist organizations, the Canadian government had frozen Hussein's assets. Subsequently, after a U.S. and Canadian investigation, the Canadian Department of Justice concluded that "there are reasonable grounds to believe Mr. Hussein is connected to any terrorist activities."¹⁶¹ A Canadian Justice Ministry spokesman explained, "We looked at the evidence and then it became clear there was no evidence."¹⁶²

e. Poor Record in Material Support Prosecutions

The federal government's track record in material support prosecutions is poor, and data suggests that insufficient evidence is a reason. A recent study of material support prosecutions from September 2001 to July 2007 reveals an unusually high acquittal rate for these cases. The Department of Justice's trial conviction rate for all felonies is fairly steady over the years: 80 percent in 2001, 82 percent in 2002, 82 percent in 2003, and 80 percent in 2004. But almost half (49 of 117) of the defendants charged with material support terrorism under the criminal material support statute (IEDPA § 2385b) who chose to go to trial were acquitted, and these others were found guilty only after a bench trial. The study also suggests that the government is overreaching in charging material support violations for behavior not reasonably linked to illegal or violent activity.

The data is especially troubling given that the median sentence for a conviction at trial for material support under the criminal material support statute (IEDPA § 2385b) is 84 months longer than for a guilty plea to the same offense. That those defendants who risk the additional 84 months in prison are acquitted in almost half of the cases raises a disturbing question of whether the government is using the draconian sentences provided in this Patriot Act-enhanced statute to compel plea bargains where the evidence might not support conviction at trial. Of the 67 defendants whose cases were resolved during the study period, 30 pled guilty to material support and another 11 pled guilty to other charges. Only nine of the remaining 20 were convicted.

A 2007 Department of Justice Office of Inspector General report demonstrates that many terrorism-related cases result in charges on immigration violations, minor crimes, or other crimes unrelated

to terrorism. For instance, after the closure of Illinois-based Muslim charity, Evénement International Foundation (EIF) in December 2001, the government accused its director, Ensam Arnaout, of operating the charity as a financial front to support al-Qaeda and other groups engaged in armed violence overseas. A year and four months later, the government indicted Arnaout on charges of perjury, and prosecutors dropped the terrorism charges. In October 2002, ten months after the raids on EIF, prosecutors finally secured an indictment on conspiracy and racketeering charges. In February 2003, the government dropped terrorism-related charges against Arnaout in exchange for a guilty plea on one count of racketeering conspiracy.

A recent study of material support prosecutions from September 2001 to July 2007 reveals an unusually high acquittal rate for these cases. This disparity suggests that the government is overreaching in charging material support violations for behavior not reasonably linked to illegal or violent activity.

Some cases against U.S.-based Muslim charities and their leaders or employees have revealed that federal authorities lacked persuasive evidence showing the charity aided terrorism. To date, the U.S. government has successfully prosecuted only one of the six designated U.S.-based Muslim charities on terrorism charges.

ACLU research also demonstrated the government's apparent use of immigration-related charges to sanction charity leaders and employees

in the absence of evidence to indict. The charging of charity leaders and employees with minor immigration violations when there is inadequate evidence to indict raises concern because it creates the perception of ethnic and religious profiling. Furthermore, the government's invocation of terrorism in such cases results in unfair treatment. For example, in December 2001, the Immigration and Naturalization Service (INS) detained the founder and president of Michigan-based Muslim charity, Global Relief Foundation (GRF), Rabih Haddad, for overstaying a student visa. After bond hearings that were closed to the press, Haddad's family and the public, an immigration judge denied bond and ordered continued detention of Haddad. Haddad was held in solitary confinement in immigration detention, and was finally deported after 19 months of detention. A London paper quoted U.S. Representative John Conyers as stating, "The treatment of Rabih Haddad by the Immigration and Naturalization Service over the past several weeks has highlighted everything that is abusive and unconstitutional about our government's scapegoating of immigrants in the wake of the September 11 terrorist attack." To date, neither GRF nor any of its officers or staff members has been criminally charged, nor have they been prosecuted for any terrorism-related offenses.

According to Islamic banking and finance expert Ibrahim Warde, "In most [criminal] cases I've seen there might be some kind of evidence or wrongdoing, typically related to terrorism or irregularity, but nothing that would justify an arrest and such spurious charges. The use of immigration violations rather than fraud goes to broader money-laundering issues, and in the end the individuals or groups get nailed for typically small financial irregularities." Warde also noted, "In the grand scheme of things the government's record has not been very successful. In most cases the government was unable to prove its case, and when it did it was based on the legal strategy of focusing

on charges unrelated to terrorism, for which the defendants could be nailed. If you look at it objectively the claims of terrorism against charities are quite unfair."

"It is a bait and switch starting with allegations of links to terrorism financing, then from there it goes to broader money-laundering issues, and in the end the individuals or groups get nailed for typically small financial irregularities."

In its report on terrorism financing, the 9/11 Commission staff found that the government's practice of bringing charges for crimes unrelated to terrorism creates the perception of ethnic and religious profiling and raises constitutional concerns. "When terrorism charges are not possible, the government has brought nonterrorist criminal charges against those suspected of terrorism financing. Such an approach, while perhaps necessary, leaves the government susceptible to accusations of ethnic or religious profiling that can undermine support in the very communities where the government needs it most. Moreover, ethnic or geographic generalizations, unsupported even by intelligence, can both divert scarce resources away from the real threats and violate the Constitution."

Case Study: Global Relief Foundation: Use of Immigration Charges in Absence of Evidence to Indict

Founded in 1992 and headquartered in Illinois, the Global Relief Foundation (GRF) was one of the largest nonprofit Muslim charities in the U.S., funding humanitarian aid programs in over 20 countries throughout the world.¹⁵⁷ In December 2001, federal agents raided GRF's offices and the charity's assets were seized pursuant to an OFAC blocking order pending investigation. To this day, neither GRF nor any of its officers or staff members has been criminally charged, nor have they been prosecuted for any terrorism-related offenses. Nonetheless, the designation and accusations have had devastating effects, particularly for GRF founder and president, Rabi Haddad. Haddad's case raises concern because his immigration hearings were closed to the public and press, and decisions regarding Haddad's detention and the merits of his asylum claim were apparently unilaterally affected by the government's claims that Haddad was a threat to national security. The mere invocation of terrorism by the government tainted the immigration proceedings in Haddad's case.

Haddad was arrested the day of the December 2001 raids on charges of overstaying his visa.¹⁵⁸ At the time, his visa was expired and he was in the process of applying for permanent residency.¹⁵⁹ Haddad's bond hearing was held on December 19, 2001 and was closed to the public at the last minute.¹⁶⁰ Following that closed hearing, Judge Hacker denied bail and ordered Haddad detained.¹⁶¹ While Haddad remained detained, frequently in solitary confinement for 23 hours a day, he, several newspapers, and U.S. Representative John Conyers challenged the closure of the hearing.¹⁶² Haddad prevailed in the U.S. District Court for the Eastern District of Michigan in April 2002, and the decision was affirmed three months later in August 2002.¹⁶³ In announcing the decision of the three-judge panel of the U.S. Court of Appeals for the Sixth Circuit, Judge Damon J. Keith accused the government of trying to place its actions "beyond public scrutiny," adding that "democratic die behind closed doors."¹⁶⁴

Subsequently, Haddad filed a number of motions aimed at obtaining a new bond hearing before an impartial judge.¹⁶⁵ In September 2002, his motion was granted, and the U.S. District Court for the Eastern District of Michigan ordered the government to either release Haddad from detention or hold a new detention hearing open to the public and before a new immigration judge. In the meantime, his removal hearing, originally scheduled for August 29th, was repeatedly postponed. At the same time, Haddad's designated parole hearing in October 2002 was again closed to the public.¹⁶⁶ Haddad subsequently filed a habeas corpus hearing in October 2002, which was again closed to the public.¹⁶⁷ In response to an emergency motion filed by Haddad, the U.S. District Court for the Eastern District of Michigan ordered the immigration judge to provide the particular reasons for the closure to his attorneys.¹⁶⁸

Haddad's immigration hearing to consider his request for asylum was scheduled for October 2002. In the middle of these proceedings, the government designated GRF an SDGT, leading critics to charge the timing was purposeful. On October 24, 2002, Haddad was again denied bond, and on November 22, 2002, he was denied asylum. In denying his request for asylum, Judge Newberry cited his ties to GRF and claimed that Haddad was a "danger to the U.S."¹⁶⁹ Haddad immediately filed an appeal with the Board of Immigration Appeals. After 19 months of detention, Haddad was finally deported in July 2003, with no notice to his family or attorney. He called his family from Amsterdam to tell them of the deportation. His family was deported a few weeks later.¹⁷⁰ GRF remains inoperable and Haddad is prohibited from ever returning to the U.S.

f. Public Naming of Unindicted Co-conspirators

In its prosecution of the Texas-based Holy Land Foundation for Relief and Development (HLF), the Department of Justice took the extraordinary step of publicly filing a list naming 246 individuals and organizations as "unindicted co-conspirators" (UCCs) in an attachment to a pre-trial brief [UCC list]. Government lawyers named individuals, including past associates of HLF, and some of the country's largest, mainstream Muslim organizations as unindicted co-conspirators in the criminal case alleging the HLF plot to fund the September 11 attacks. HLF probed why many of the individuals and organizations that have not been charged with any crime, without affording the named individuals and groups the ability to defend themselves or clear their names. By branding these individuals and organizations with the "terrorism" label, the government unfairly and irreparably damaged the reputation of mainstream Muslim organizations and many of the named individuals.

Among others, government lawyers publicly identified as co-conspirators the Islamic Society of North America (ISNA), America's largest mainstream Muslim community-based organization; the North American Islamic Trust (NAIT), a charitable trust that holds title to religious properties and facilitates the ability of American Muslims to practice their faith; and the Coalition on American-Islamic Relations (CAIR), America's largest Islamic civil liberties group. In June 2008, the ACLU filed a motion on behalf of ISNA and NAIT, in federal court, asking the court to declare the government's public naming of ISNA and NAIT as unindicted co-conspirators to be a violation of their Fifth Amendment rights; to order the expunging of the organizations' names from any public record filed or issued by the government that identifies these groups as unindicted co-conspirators; and to block the government from labeling ISNA and NAIT this way in the future without specific permission from the court. CAIR filed a

similar motion asking the court to strike the organizations' name from the UCC list.¹⁷¹ At the time of this writing, the motions had not yet been decided.

In its brief on behalf of ISNA and NAIT, the ACLU noted that the government has conceded it had absolutely no evidence to show that either ISNA or NAIT had engaged in a criminal conspiracy. The lead prosecutor in the HLF case told lawyers for the two organizations "that ISNA and NAIT were not subjects or targets in the HLF prosecution or in any other pending investigation."¹⁷² The prose-

By branding individuals and organizations with the "terrorism" label, the government unfairly and irreparably damaged the reputation of mainstream Muslim organizations and many of the individuals named unindicted co-conspirators.

cutor also acknowledged that the public labeling was simply a "legal tactic" intended to allow the government to introduce hearsay evidence against HLF later at trial. The Department of Justice's U.S. Attorneys' Manual instructs U.S. Attorneys not to name unindicted co-conspirators in indictments and direct U.S. Attorneys to avoid publicly naming unindicted co-conspirators.¹⁷³

Michael Kinsman, Secretary General of the National Council of Churches, said in a statement, "Without the opportunity to defend themselves, ISNA has been presented to the public as guilty until proven innocent; a violation of their Fifth Amendment rights. The label of 'co-conspirator' is damaging to the excellent reputation of ISNA and those who collaborate with them to build a better America."¹⁷⁴ In another statement criticizing the naming of ISNA as an unindicted co-conspirator,

the Union for Reform Judaism noted, "This charge includes no accusation of wrongdoing by ISNA, yet it nonetheless has a clear compulsion of guilt which could greatly hurt the organization in its work to advance the cause of justice in our country.... Because ISNA is one of the nation's largest Muslim umbrella organizations, the charge is also damaging, and has a chilling effect on the entire American Muslim community."¹⁴

In interviews with the ACLU, American Muslims repeatedly pointed to the UCC list as a deeply problematic smearing of the nation's largest, mainstream Muslim organizations. By connecting these organizations with a criminal terrorism case, and by publicly linking the organizations and individuals with groups such as the Muslim Brotherhood, the UCC list smeared these mainstream organizations. One Muslim-American Texan told the ACLU,

The UCC list listed everybody and their mother. Look at the list: it has the top jihadis, most extreme Muslims, but also non-political, non-advocacy on behalf of Muslims; ISNA, which is the oldest Muslim organization and the Muslim educational organization in this country; and NAT, which is a trust that holds the deeds of mosques, billions of dollars. By listing these groups, you are taking my association, my education, my trust. What it says is I don't want you to have any advocacy, any education, or to own anything.¹⁵

According to one community activist in Texas, "The UCC list is a nuclear bomb, public relations-wise. In the cases of CAIR, NAT, and ISNA, the media, Congress, and all their adherents in the blogosphere refer to them as unindicted co-conspirators."

Many Muslims told the ACLU that the release of the UCC list has added to the climate of fear among American Muslims and their apprehensions that the U.S. government has a policy of imposing guilt on Muslims by association. One American Muslim

in Texas told the ACLU, "When the government made the list of unindicted co-conspirators, including NAT and ISNA, it really created fear, because these are mainstream organizations, umbrella organizations. People view these as mainstream, liberal groups, and they see those being targeted. He added, "Every association with NAT and ISNA is considered bad because they lead the UCC list. People are being talked into suspicion and persecution. People fear that if the person named wins the HLF case, it will then go after NAT. Built by association, other than the McCarthy era, it is something that is not supposed to happen in this country."¹⁶

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According to the president of the Dallas-Fort Worth chapter of CAIR, contributions to the CAIR chapter have dropped as a result of the naming of CAIR as an unindicted co-conspirator. He explained that the naming of CAIR as an unindicted co-conspirator has had far-reaching implications for the local chapter: "Contributions to CAIR have gone down, so we can hire fewer people, can run fewer activities. People are afraid to come to events. Mosques are also hesitant to open the doors to us, to the organization, in Richardson. People doesn't greet them, because of fear.... People don't want to be on the board. They say they support us and want to help, but they don't want to be named as a member of the board. People don't want a letter or newsletter from CAIR coming to their house—they don't want their name on the mailings."¹⁷ In addition, a coalition of Muslim groups announced

in March 2009 that it believed the FBI's recent decision to sever ties with CAIR pending the resolution of unspecified "issues" stemmed from the designation of CAIR as an unindicted co-conspirator.¹⁸

Individuals named unindicted co-conspirators in the HLF case reported losing the ability to get jobs and being dismissed from custody and visitation with his children was being reviewed in family court partly on account of his naming as an unindicted co-conspirator. One individual named an unindicted co-conspirator in the HLF case said, "I was unemployed for one full year. I was judged personally. I sent so many resumes.... I have applied for jobs, and several times I talked to them and afterward they don't even give me a call back. I bet they do a background check. This devastated me financially."¹⁹ Another individual labeled an unindicted co-conspirator in the HLF case told the ACLU she similarly encounters employment difficulties because of being named an unindicted co-conspirator: "I can't get another job in this country. A headhunter told me that she saw my name [on the UCC list] on the internet and she dropped me. I get to the final third round of job interviews and then they drop me. Because of my name I can't get a job, because now part of your due diligence you scan the internet before hiring."²⁰

Another individual listed as an unindicted co-conspirator in the HLF case told the ACLU, "I live in fear to this day—this changed my life, and my family's life, and my kids' lives. It is an everyday agony, we have to face the unknown, every day asking, 'What's next?' He said of being named to the UCC list, "I am in shock. I don't know what all implications of what my rights are, what I am accused of, what is my crime."²¹

g. Charities Held Liable for Damages in Unrelated Foreign Terrorism Lawsuits

The charitable assets of designated Muslim charities have become targets of lawsuits for damages in unrelated foreign terrorism cases. In a landmark lawsuit seeking to hold the Holy Land Foundation for Relief and Development (HLF) accountable for alleged terrorist acts committed by Hamas, the district court relied in part on the designation of HLF as holding the charity liable for damages.²² In 2004, the U.S. District Court for the Northern District of Illinois ordered HLF, along with a number of other Muslim groups and individuals, to pay \$156 million to the parents of Daniel Borm, an American boy whose airplane was hijacked in a Hamas attack in the West Bank in 1998.²³

In finding the organizations liable for "aiding and abetting" Hamas, the district court relied on the OFAC designation of HLF and the U.S. Court of Appeals for the D.C. Circuit's affirmation of the designation.²⁴ The 2004 ruling preceded the 2007 and 2008 criminal trials of HLF, as well as its November 2008 conviction on charges of providing material support for terrorism detailed in section V of this report. Moreover, the district court relieved the Borms, the plaintiffs, of the burden of showing that the defendants' actions were a cause in fact of the killing, holding that the "incontrovertible" evidence the federal court reviewing the OFAC designation used to determine that HLF had funded, directly or indirectly, Hamas, was enough to hold them accountable.²⁵ Notably, the district court did not find any direct ties between HLF and Hamas.

The district court also relied heavily on the Treasury Department's allegations in designating HLF, and allowed otherwise inadmissible hearsay evidence. Because the district court imposed no requirement on the Borms to show any illegal intent, the case generated fear among humanitarian nonprofits that the district court's decision may

open charitable nonprofits to long-reaching liability based on indirect ties, rather than on evidence of illegal intent.

The U.S. Court of Appeals for the Seventh Circuit subsequently set aside the judgment award in December 2007, noting "Belief, assumption, and speculation are no substitutes for evidence in a lawsuit." The court stated that the plaintiffs "ought to establish a line of proof connecting the defendant to the murder of David Boim," the law demands that they demonstrate such a nexus before any defendant may be held liable for David's death. We must resist the temptation to guess, over-err, admit spurious evidence, and assume facts not adequately proved simply to side with the face of innocence and against the face of terrorism."²¹¹ In the three-judge panel decision, the court emphasized that in determining whether or not HLF could be held lia-

"Our own response to a threat can sometimes pose as much of a threat to our civil liberties and the rule of law as the threat itself."

ble for the death, the plaintiffs bore the burden of proving that HLF had intended the funds to lead to terrorist acts. While reaffirming the designation, it noted that the criteria for designation under E.O. 13224 were far broader than those in determining liability for a criminal act:

Nothing that this court, the district judge, or a federal appeals court could do would affect HLF's designation as an SDGT or SDGT if it were the government's ability to rely on that designation in the future. The validity of the designation is not at stake here. Instead, this suit looks backward to determine whether HLF knowingly and intentionally supported Hamas's terrorist

activities in a way that had some causal connection with David's murder, which occurred before HLF was even designated an SDT and SDGT.²¹²

After rehearing the case, on December 3, 2008, the full (en banc) U.S. Court of Appeals for the Seventh Circuit reversed the three-judge panel. December 2007 decision to require HLF also remained to the district court to report further findings of fact on HLF's liability.²¹³ The full court ordered the three-judge panel ruling, finding that "victim-of-terrorism plaintiffs in civil damages suits do not have to show that HLF had intended the funds to lead to terrorist acts nor do they have to show a causal link between the aid provided and the terrorist activity, but merely must prove that HLF provided material support to Hamas," "knowing the organization's character."²¹⁴ The new decision finds that parties that contribute to groups that commit terrorist acts can be held liable for damages notwithstanding a lack of intent by the donor or the materiality of the contribution.²¹⁵

Arguing that the majority had "eliminated...the basic tort requirement that causation be proven," dissenting Judge Ilana Rovner wrote that the en banc court was "following a path that portends sweeping liability for those individuals and groups who give their support to the humanitarian activities and affiliates of terrorist organizations but who may have no intent to support terrorism and whose actual link to terrorism has never been evaluated by a factfinder."²¹⁶ She cautioned, "Our own response to a threat can sometimes pose as much of a threat to our civil liberties and the rule of law as the threat itself."²¹⁷

Other suits against Muslim charities are pending, and some Muslim donors were aware of the Boim case and told the ACLU they feared that their charitable donations could be diverted to help pay judgments in unrelated foreign terrorism lawsuits.

SDGT-tax exemption revoked), and Goodwill Charitable Organization (Michigan, SDGT-tax exemption revoked). A seventh U.S.-based Muslim charity has closed due to an OFAC blocking order but still has not been designated over three years later: Kind-Hearts for Charitable Humanitarian Development (Ohio, SDGT-tax exemption revoked but assets frozen). This charity is included on the Specialty Designated Nationals and Blocked Persons List, an OFAC list of individuals and groups that had their assets blocked pending investigation without having been given a formal terrorist designation.

In addition, at least six U.S.-based Muslim charities, including KinderUSA (Texas), Life for Relief and Development (Michigan), Al-Mabarrat (Michigan), Child Foundation (Oregon), Help the Needy (New York), and Care International (Massachusetts) have been investigated and investigated or investigated. These charities have not been designated or had their assets seized pursuant to a blocking order.

Many American Muslim community leaders and members have pointed to the disproportionate enforcement of counterterrorism laws against Muslim charities as evidence of discriminatory, religion-based targeting of Muslims and their charitable organizations.

Six American Muslim charities have been shut down pursuant to designation as terrorist organizations by the Treasury Department: Al-Haramain Islamic Foundation-USA (Oregon, SDGT-tax exemption revoked), Genevieve International (Texas, SDGT-tax exemption revoked), Global Relief Foundation (Illinois, SDGT-tax exemption revoked), Holy Land Foundation for Relief and Development (Texas, SDGT-tax exemption revoked), Islamic American Relief Agency-USA (Missouri,

V. Discriminatory Enforcement of Counterterrorism Laws Against American Muslim Charities

The federal government's enforcement of terrorism financing laws has disproportionately affected American Muslim charities. The ACLU has documented nine U.S.-based Muslim charities that have closed as a result of government action or investigation. These charities were located in Texas, Michigan, Missouri, Illinois, Oregon, Ohio, and New York. The assets of these charities and the charities whose assets have been seized by the Department of Treasury, seven are Muslim charities (the two non-Muslim charities are Tamil Rehabilitation Organization-USA and Tamil Foundation, U.S.-based Tamil charities that provided humanitarian aid in Sri Lanka). To date, only three designated U.S.-based Muslim charities have faced criminal prosecution, only one of which has been convicted. Many American Muslim community leaders and members have pointed to the disproportionate enforcement of counterterrorism laws against American Muslim charities as evidence of discriminatory, religion-based targeting of Muslims and their charitable organizations.

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Many American Muslim community leaders and members have pointed to the disproportionate enforcement of counterterrorism laws against Muslim charities as evidence of discriminatory, religion-based targeting of Muslims and their charitable organizations.

a. Discriminatory Enforcement against American Muslim Charities

The vague and overbroad material support laws afford federal officials wide discretion in selecting organizations for designation and seizure of their assets, opening the door to discriminatory and arbitrary enforcement of these laws. Of nine U.S.-based charities whose assets have been seized by the Department of Treasury, seven are Muslim charities.²¹⁹ Because the Treasury Department's enforcement actions against U.S.-based organizations have disproportionately impacted Muslim charities, many in the Muslim community have expressed their concern that the government is discriminatorily targeting Muslim charities.²²⁰ As a Muslim community attorney pointed out to the ACLU, "How many Jewish or Christian charities that work in troubled areas are being investigated? None!"²²¹

"I think the attack on the Muslim charities was just easy, it was an easy, soft target."

By a former Treasury Department official's own admission, Treasury has targeted Muslims for enforcement of terrorism financing laws. A former Department of Treasury official who asked not to be named told the ACLU, "We are not going into Irish bars looking for people who support the IRA right now. There is a reason that we are focusing on the Muslim community. There is a greater proportion of Muslims engaged in ethnic terror than other groups. Everybody knows [targeting Muslim charities is] not baseless."²²² Former Assistant Secretary of the Treasury, Paul Craig Roberts, who served in the Treasury Department under President Ronald Reagan, said, "I think the attack on the Muslim charities was just easy, it was an easy, soft target."²²³

Beyond American Muslims' perception of discriminatory targeting of their community, it is clear that the federal government is unequally enforcing terrorism financing laws. The federal government's markedly different treatment of for-profit organizations that have clearly violated terrorism financing laws demonstrates that these laws are unequally enforced. For example, the largest financial institution of U.S.-based Muslim charities, Chiquita International, was asked to pay a fine of \$25 million following its payment of \$1.7 million directly to two designated terrorist groups in Colombia between 1997 and 2003.²²⁴ Chiquita admitted to these payments in 2003, but no criminal charges were filed against the organization, its assets were never seized or frozen, and Chiquita continues to operate.²²⁵ In another example of contrasting treatment, OFAC has never designated Halliburton nor frozen its assets despite the company's conduct of business with Iran, a designated state sponsor of terrorism.²²⁶

The designation of the Texas-based Muslim charity Holy Land Foundation for Relief and Development (HLF) also raises concerns about the unequal treatment of the Muslim charity, which was charged with providing support to charity committees in the West Bank and Gaza Strip, while other aid organizations and agencies that have contributed to the same charity committees as HLF have not been designated nor indicted. Unlike Chiquita, which had directly funded two designated terrorist groups, the federal government designated and later criminally prosecuted HLF for supporting non-designated charity groups.

Case Study: Holy Land Foundation for Relief and Development: Criminalizing Support for Non-Designated Charities

In December 2001, the Texas-based Holy Land Foundation for Relief and Development (HLF), then the nation's largest Muslim charity, was shut down when it was designated a terrorist organization. In announcing the designation, President Bush charged in a December 2001 press conference that "Hamas has obtained much of the money that it pays for murder abroad right here in the U.S., money originally raised by the Holy Land Foundation."²²⁷ "The Holy Land Foundation claims that the money it solicits goes to care for needy Palestinians in the West Bank and Gaza," Bush said. Instead, he said, the funds were "used by Hamas to support schools and indoctrinate children to grow up to be suicide bombers," and to "recruit suicide bombers and to support their families."²²⁸

The government never produced evidence to support President Bush's accusations. By the time of the 2007 criminal trial against the charity and five of its leaders, prosecutors no longer claimed HLF provided direct support to Hamas or for violent acts. Nor did the U.S. government allege



In December 2001, the Texas-based Holy Land Foundation for Relief and Development, then the nation's largest Muslim charity and in operation for over a decade, was shut down when it was designated a terrorist organization. The government seized the charity's assets during the Muslim holy month of Ramadan, at the height of annual Muslim charitable giving. (Mark Graham/New York Times)

that HLF intended to support terrorism or that its funds were actually used for that purpose. Instead, prosecutors admitted all the money went to charitable aid. At trial, prosecutors charged HLF with providing funds to local charitable groups known as Zakat committees that delivered the money to HLF and in the West Bank and Gaza Strip.¹⁹ During the trial, the government did not name the HLF or any other terrorist groups, as the Zakat committees were not designated terrorist organizations.²⁰ While the government argued that the charity committees were established in part by Hamas, and distributed aid to recipients "who then associated this social outreach with Hamas."²¹ The government nonetheless sought to impose extended criminal sentences on HLF's leaders.

As of the writing of this report, the government has not designated the Zakat committees, although the Treasury Department has known about these groups at least since HLF was indicted in 2004. At trial, defense attorneys presented documentary evidence and testimony from a former U.S. diplomatic official that some of the same Zakat committees HLF is charged with supporting have received aid from the International Committee of the Red Cross, the U.S. Agency for International Development, the European Commission, and United Nations agencies including the United Nations Relief and Works Agency.²² Further, as a defense witness in the criminal trial against HLF, Edward Abingdon, former consul general at the U.S. Consulate General in Jerusalem and the State Department's second-highest-ranking intelligence official, testified that during his years working in the region, when he received daily CIA briefings and personally visited each of the Zakat committees later named in the indictment against HLF, he never received information suggesting that the Zakat committees aided by HLF were controlled by Hamas.

Other allegations that formed the bases of HLF's designation raised further concerns of discriminatory enforcement against HLF. In Senate testimony regarding the designation of HLF and before the criminal indictment of HLF, HLF's defense attorney John Boyd testified that in designating HLF a terrorist organization, the Department of Treasury relied on an FBI memorandum that pointed to HLF's financial support for a hospital in Jenin, in the West Bank, but it did not mention that the U.S. Agency for International Development had also assisted the same hospital in April 2002.²³ According to Boyd, the Department of Treasury also relied on HLF's provision of aid to over 60 Palestinian detainees who were stranded in southern Lebanon during the war in 1992-93. But the U.S., Britain, the United Nations, the International Committee of the Red Cross and other countries had also provided aid to that group of refugees.

The 2007 criminal trial against HLF and five of its leaders lasted more than three months and involved documents and electronic surveillance collected by federal agents over nearly 15 years, yet federal prosecutors were unable to gain a conviction on any of the 197 counts, and the judge declared a mistrial on October 22, 2009.²⁴ The jury came to a unanimous decision acquitting one defendant, Mohammad El-Mezain, HLF's original chairman and endowments director, on 31 out of 32 counts.²⁵ The verdict that was initially announced acquitted one defendant, Muftid Abulqader, on all 32 charges against him, and acquitted defendant Abdairahman Odeh on all but two of the 32 charges against him, deadlocking on the remaining two charges.²⁶ However, after the judge polled the jury, three jurors disagreed with those verdicts, and ultimately two jurors refused to

validate the initial verdict for Abulqader and Odeh.²⁷ The jury deadlocked on charges against HLF and was reportedly twenty split on charges against its principal leaders, former chairman Ghassan Elashi and Shukri Abu-Baker, the charity's former chief executive.²⁸

After the first trial, juror William Neal told the Associated Press, the case against HLF "was strung together with macabre needles. There was so little evidence."²⁹ Another juror, Nanette Scripps told the Los Angeles Times, "I kept expecting the government to come up with something. They were not. The case was based on assumptions that were based on suspicion."³⁰ The case was so general that the government failed to specify the liability for support of designated charitable groups was a reason for the failure to obtain any conviction against HLF or its leaders.³¹

However, on November 24, 2008, after a three-month retrial, the charity and five of its leaders were convicted on all 108 criminal counts, including charges of material support for terrorism. The retrial resulted in convictions even though prosecutors again admitted that all funds went to local charity committees that were never on government watch lists. On retrial, prosecutors dropped the charges from 197 to 108 counts of material support for terrorism, money laundering, conspiracy, and tax fraud. On retrial, U.S. District Judge Jorge A. Solis admitted into evidence three exhibits that had been excluded as hearsay from the first HLF trial. While there was a difference judge in the retrial and some new witnesses, the prosecution and defense's basic arguments were the same as in the first trial.³² Former Dallas federal prosecutor Tom Meisheimer told the Dallas Morning News after the convictions, "To spend millions of dollars in time and expenses to prosecute people who were of no real threat to anyone, under the banner of a terrorism case, is a waste of precious federal resources."³³ He added, "I think this case proves that, with enough effort, the federal government can convict nearly anyone."³⁴

Attorneys for HLF and the defendant leaders said they would appeal the verdicts. Defense attorney Nancy Hollander, who represented Shukri Abu-Baker, told the New York Times, "Our clients were not even allowed to review their own statements because they were classified—statements that they made over the course of many years that the government wiretapped."³⁵ She added, "They were not allowed to go back and review them. There were statements from alleged conspirators that included handwritten notes. Nobody knew who wrote them; nobody knew when they were written. There are a plethora of issues."³⁶ On May 27, 2009, the defendants were sentenced to prison terms ranging from 15 to 85 years.³⁷ As of the writing of this report, defense attorneys had filed notices of appeal for all the individual defendants, and are in the process of preparing the appeals.

b. **Disruptive Investigation or Public Raid of American Muslim Charities**

At least six U.S.-based Muslim charities run by American Muslims, including KinderUSA (Texas), Life for Relief and Development (Michigan), Al-Mabarrat (Michigan), Child Foundation (Oregon),²⁴ Help the Needy (New York),²⁵ and Care International (Massachusetts), have been raided by a Department of Justice Joint Terrorism Task Force (JTTF) and in some cases declared under investigation. Two of these charities, Help the Needy and Care International, closed after charges unrelated to terrorism were brought against their leaders.²⁶ In one or two cases, the charities have been designated terrorist entities, or had their operations seized pursuant to a Treasury Department blocking order. In none of these cases has the charity or its leaders been indicted for or convicted of any terrorism-related crimes.

Public announcements of investigations and raids of charities can undermine donors' confidence, provoke fear among donors that they may be held liable for now-lawful donations to these charities, tarnish these charities' reputation, and substantially disrupt these charities' operations because of media reports that implicitly or overtly suggest that these investigations were tied to terrorism.

ACLU research reveals that public announcements of law enforcement investigations and raids of charities can undermine donors' confidence in these charities, provoke fear among donors that

they may be held liable for now-lawful donations made to these charities, tarnish these charities' reputation, and substantially disrupt these charities' operations because of media reports that implicitly or overtly suggest that these investigations were tied to terrorism. And yet none of these six charities has been indicted for any terrorism-related crimes, and none has been placed under a court-ordered blocking order. The charities have been designated a terrorist organization. In some of these cases federal officials clarified to charity leaders and attorneys that the investigations had nothing to do with terrorism and instead focused on compliance with federal statutes and regulations, including tax laws and Treasury regulations governing transactions with foreign countries under embargo.

In the case of KinderUSA, a Texas-based Muslim charity that provides humanitarian aid overseas, the Dallas U.S. Attorney's office began conducting a grand jury investigation of the group in November 2004 and subpoenaed business records of KinderUSA at that time. KinderUSA provided these records and fully cooperated with the grand jury. The grand jury took no action, no charges were made, and the U.S. Attorney's office in Dallas made no requests for further information. However, because of media reports that unaccountably linked the investigation to terrorism, KinderUSA suffered substantial disruption of its operations. Donations dropped from \$1.6 million in 2004 to \$250,000 in 2005. KinderUSA lost donors, all donations from missequenced in 2004, and two board members resigned.²⁷ Staff, Shantik and an senior employee, to name a few, were directed to resign. KinderUSA's executive director, as a result of the public investigation and tarnishing of the charity, "Many of our donors are frightened and as a consequence of the government's harassment, many of our donors stopped giving. Often, I see former donors and they feel compelled to apologize to me stating, 'you have to understand.' They are just afraid, period."²⁸

Despite the damage caused by the public investigation of KinderUSA and despite the obvious lack of indicable evidence of wrongdoing, the U.S. Attorney's office has not publicly cleared the charity. According to KinderUSA executive director, "Each grand jury's hired for 18 months, so the November 2004 grand jury is obviously over. The government would have issued another grand jury, but that would have indicated whether there was evidence to release to indicate whether there was evidence to indict or not—nothing has happened, and the U.S. government hasn't said anything. People know this, and because the government would never say this, and because the organization would never say this, we investigated this organization and found they've done nothing wrong, this keeps that fear persisting. You're always under investigation."²⁹ In a letter to the *Wall Street Journal* on behalf of KinderUSA, Ohio attorney John Kitroy wrote, "The conclusion reached by me and by my client is that the investigation, if you could call it that, concluded long ago."³⁰

According to Laila al-Marayati, president of the board of directors of KinderUSA, "You're always waiting, they can come in at a moment's notice.... You never know what will happen, and there's not a single thing you can do to prevent it, because they don't have to show probable cause like they would in another case. They don't have to show you anything, plus they can use secret evidence and you can't refute it. To function under that cloud, you can't think about it, it scares the donors. Whether KinderUSA will be able to recover, it's hard to overcome that because the donors are fearful."³¹ KinderUSA continues to deliver nearly \$1 million in humanitarian relief annually to nearly 50,000 worldwide, but it has not had the charity cleared before the investigation.³²

In the case of Life for Relief and Development (LIFE), a Michigan-based Muslim charity that is known as the largest U.S.-based American Muslim charity currently in operation, on September 18, 2006, a Department of Justice Joint Terrorism

Task Force raided its offices. The raid took place during the week before the month of Ramadan, in which LIFE ordinarily receives about 40 percent of its annual cash donations. During the raid law enforcement officials seized several computers and nearly 200 boxes of paperwork necessary to LIFE's operations. The government initially wanted LIFE to pay \$100,000 to cover the costs of reproducing the seized materials. LIFE refused, arguing that the seizure was substantially reduced after judicial intervention.³³

Local media showed up at the raid and covered it extensively. At the time of the raid, FBI agents told LIFE leaders that the raid was totally unrelated to terrorism, and since then the charity has never been designated nor has OFAC issued a blocking order to seize the charity's assets.³⁴ A grand jury investigation from late 2007 to early 2008 resulted in no indictments against the charity or its leaders, but rather a single indictment against a former employee of LIFE for alleged activities in violation of the Iraqi sanctions of the 1970s when he was not employed at LIFE and other alleged crimes wholly unrelated to terrorism. While federal officials maintained a week after the raid that donations to the charity remained legal, the government has never stated that LIFE has been cleared of wrongdoing.³⁵

The public raid substantially disrupted LIFE's operations. After the raid, Comerica Bank informed LIFE that it planned to terminate their seven bank accounts within two weeks. According to an attorney representing LIFE, Sherree Akeel, Comerica's action appeared to be prompted by media reports of the raid, since Comerica's announcement of the closure of the accounts came only two days after the raid.³⁶ According to Akeel, because of Comerica's closure of its accounts, "LIFE couldn't wire monies—imagine trying to run humanitarian operations if you can't write a check.... The bank issue crippled its operations; it didn't die, but it crippled it."³⁷ Akeel told the ACLU that LIFE was only able to resume operations

of directors had considered closing down the charity because of the fear the raid created, although the charity ultimately decided to continue operating.⁶⁷ Akeel told the ACLU: "The government did everything short of blocking LIFE's assets, including: you have no accounts, no computers, your employees are scared, the donors are scared, and your bank accounts are closed."⁶⁸

The raid has left a lingering cloud of suspicion over the organization, even though the Treasury Department and law enforcement have taken no enforcement actions against LIFE. According to Akeel, "The raid frightened the community, of course this affected LIFE and its reputation... LIFE continues to operate, but there is this cloud that hovers over the organization. The raid created a climate of fear, like they are under suspicion."⁶⁹ The national legal advisor of the American-Arab Anti-Discrimination Committee (ADC) told the ACLU, "We don't need raids—don't come with JTFF and the media. Just look at LIFE; they were one of the largest providers of aid in the Middle East, and because of the raid they had to lay off staff members and nearly had to close down operations. All of a sudden they are tainted. That cloud is over them—donors say, 'I don't want to give to them, I'll give to another charity that hasn't been raided.'"⁷⁰ Despite the negative impact on the charity, LIFE continues to deliver about \$15 million in humanitarian aid annually worldwide.

The ACLU documented similar disruptive consequences in the cases of other charities that have been publicly declared under suspicion or raided. The executive director of Muslim Charities said of the efforts of public officials: "The impact was significant, instead of going to 100 mosques in America for fundraising, that was reduced to 30 to 40 events."⁷¹ The executive director of another Muslim charity, who asked that the ACLU not name his charity, said that since two government raids on the charity,

The government has been silent—no indictments came, flat-out nothing happened. I would love for the government to say our charity is cleared of wrongdoing. Seeing how they never charged us with anything, there's nothing to clear us of. To us, not putting us on a list is clearing us, but there is a perception in the community that our charity has always had something going on. I read the community is fearful of being investigated and conducted a raid when the FBI investigates and conducts a raid, and it's on the news, in the community's mind and it's it, we've been tried and convicted.⁷²

The regional director of the ADC of Michigan, Imad Hamad, said, "What sinks in, in people's minds, is the experience they are witnessing. So even if three years a court finds the charity innocent, by that time the charity is done, placed on a slow-death machine because the charity's image and reputation are assassinated."⁷³

The government's refusal to measure donors that have donations made in good faith to charities that have been raided but not closed (as detailed in section VI of this report) compounds the chilling effect on would-be donors to these charities. According to Imad Hamad, "Life for Relief and Development was raided and has been under investigation for two years. It is still functioning, and when we ask the government if it is legal and safe to give to LIFE, they say it is up to you, ask your attorney. Who is going to let us do the law: the attorney or the government?"⁷⁴ One donor explained,

I personally haven't donated to LIFE because they were raided, though I did donate in the past. I don't want to be a donor because the charity is raided because of the government. The government raided the charity and it seems unsafe to donate. Number one, there are other organizations that aren't under this cloud, so I think it is safer to donate to these other charities. My understanding is there is something

that changed in the law, that the government can come back and hold the donor responsible for his donations, so I am being vigilant.⁷⁵

Another donor similarly stopped donating to any charities that have been raided: "I have not donated to LIFE and the other charities that have been raided, since these reports of raids have come out, because I can't say for sure that they are not being investigated. I would be dragged into the picture, why should I be involved with it?"⁷⁶

Directors of Muslim charities and Muslim community leaders emphasized in interviews with the ACLU that there are alternatives to public raids of charities that achieve the same goals as the public raids.⁷⁷ Akeel argued that instead of conducting a public raid, "there were alternative actions [the government] could have adopted. They could have knocked on the door and worked with the charity to resolve concerns."⁷⁸ A Muslim community leader in Michigan similarly told the ACLU, "Instead of these public raids, they can work with charities. There is a better way than having the counterterrorism Task Force raid the charity with guns drawn, and with the media happening to show up."⁷⁹

because another bank agreed to hold the charity's accounts, noting "that saved LIFE because without a bank LIFE would have been dead."⁸⁰

"What sinks in, in people's minds, is the experience they are witnessing."

So even if in three years a court finds the charity innocent, by that time the charity is done, placed on a slow-death machine because the charity's image and reputation are assassinated.⁸¹

LIFE's in-state donations were substantially affected by the raid, declining about 50 to 40 percent, according to Akeel.⁸² Out-of-state donations were not affected as substantially, which Akeel attributed to the fact that while local media had reported the raid, national media outlets had not covered it. According to one Michigan Muslim community leader, the raid on LIFE "caused significant damage to the point where local mosques that used to allow them to come in to do fundraisers no longer allow them to fundraise there now."⁸³

The raid also frightened off some of LIFE's employees and affected its ability to hire new staff. Akeel explained, "LIFE employees were quitting because they got scared, leaving a skeleton staff. LIFE was a very tight-knit community. LIFE told the ACLU that LIFE former employees were quitting. LIFE has new employees and some members of the charity's board of directors wished to withdraw from their positions due to the fear caused by the raid.⁸⁴ Another former employee of LIFE told the ACLU, "It was so hard for us to find employees to work there; they don't want to work there because the charity had been targeted. Everybody was scared."⁸⁵ A former LIFE employee also revealed that LIFE's board

a. Law Enforcement Interviews of Muslim Donors

You are asking why I give this money, but this charity is licensed and I ask, why not?

—Farid N., Dearborn, Michigan⁶⁷

The ACLU received reports of FBI interviews of donors to both currently operating and now-defunct Muslim charities, including Life for Relief and Development (LIFE), the United Foundation of America (UFA), the Islamic Relief Foundation (IRF), the Islamic Relief Association-USA (IRA), Global Relief Foundation, Benevolence International, Foundation, and Help the Needy. The ACLU has documented reports of law enforcement targeting of Muslim donors in Texas, Michigan, New York, Virginia, Florida, Louisiana, California, Minnesota, Missouri, and Wisconsin for “voluntary” interviews. In these interviews, FBI agents asked donors about donations made to these charities before the government’s investigation of the charities. Muslim donors described these interviews as coercive, intrusive, and intimidating, many characterized the interviews as harassment.

While the ACLU is unable to estimate the extent of FBI interviews of Muslim donors about their charitable donations, the cases we have documented raise cause for concern about the suspicious profiling of Muslim donors and the corresponding chilling effect the FBI’s actions have on Muslim donors.

One fear Muslim donors expressed to the ACLU is that federal and local law enforcement have obtained donor lists to target Muslim donors using these donor lists to target Muslim donors for FBI interviews. The U.S. Senate Committee on Finance conducted a high-profile investigation of terrorism financing that concluded in November 2005. As part of the inquiry, which lasted nearly two years, the committee reviewed internal records given to the Internal Revenue Service (IRS),

VI. Intimidation of Muslim Donors by Law Enforcement

Federal law enforcement is engaging in practices that chill Muslim donors and create a climate of fear that chills their religious freedom and exercise of their religion through charitable giving. Many donors reported to the ACLU that the FBI has targeted major donors to Muslim charities for interviews about their charitable donations and knowledge of Muslim charities’ activities locally and nationally. Furthermore, donors have been subpoenaed to testify in more than one charity-related grand jury investigation, further contributing to the community’s fear.

In addition, numerous Muslim community leaders and Muslim donors told the ACLU that federal and local law enforcement and Treasury Department officials’ refusal to reassure donors that they will not retroactively be held liable for donations compounds donors’ fear of making charitable donations. Moreover, many interviewees reported that they believe that federal and local law enforcement has approached community members about their charitable donations in a suspicious manner, while it has been approached in this manner, and while it is impossible for the ACLU to assess the extent of this practice, community members’ perception that this is happening on a large scale contributes to the climate of fear that chills Muslims’ charitable giving.

“Our whole community was approached by the FBI about our donations. They’ve intimidated our whole community. They’ve been asking about every single Muslim charity. Everyone is aware of this. People aren’t giving as much as they should be giving, because of this.”

including donor lists of two dozen Muslim charities.²⁶ In addition, LIFE attorney Sherief Akeel told the ACLU that federal agents took the charity's donor lists during or following a raid of its offices.²⁶ LIFE, which remains legally operating and has never been charged with any crimes, was not a part of the U.S. Senate Finance Committee investigation.

"Federal agents came to all seven or eight donors at about the same time. They came two years in a row, on the eve of Ramadan. They had two agents at each donor's medical office and two agents visiting each donor's wife at their house at the same time."

The ACLU received reports of FBI interviews of at least 60 Muslim donors in 2005 and 2006 in the Flint, Michigan, area alone. According to a lawyer who represented Muslim donors interviewed by the FBI about their donations, FBI agents interviewed about 60 Muslim donors in the Flint, Michigan, area about their charitable donations in what appeared to be a coordinated initiative.²⁷ According to the lawyer, who represented seven or eight Muslim donors interviewed as part of that group, "Federal agents came to all seven or eight donors at a time, two years in a row, on the eve of Ramadan. They had two agents at each donor's medical office and two agents visiting each donor's wife at their house at the same time."²⁸ The lawyer added, "These seven or eight donors were all of Arab Muslim background, and the one distinction with these guys is that they are very religious and they take their Zakat very seriously."²⁹ According to the donors' attorney, FBI agents asked the donors about their charitable donations to IARA and other Muslim charities, and

The ACLU also received reports that many HLF donors in Texas and elsewhere were questioned by law enforcement about their donations, but the ACLU has not been able to determine the number of donors interviewed nor the precise time period when these interviews occurred.³⁰ One Texas donor told the ACLU, "Some people who have donated to HLF have been investigated by the FBI. They have been questioned, and in some cases threatened with having their passports confiscated or denied."³¹ According to the executive director of a Muslim charity in Texas, "Our donors are concerned because all the HLF donors are being harassed when they come back into the country, and some of the big donors to HLF were harassed by the FBI."³²

In Missouri, after IARA was raided in 2004, the FBI contacted many of the charity's donors, using donor lists confiscated during a raid on the charity's offices.³³

In February 2003, as part of the federal investigation into the New York-based and now-defunct Help the Needy, law enforcement agents questioned 150 Muslim families in Syracuse, New York, who had donated to the Muslim charity.³⁴ According to reports received by the New York Civil Liberties Union and local media, law enforcement agents asked donors about their charitable donations, religious beliefs and practices, and their attendance at religious worship services, creating fear among the Muslim community.³⁵ The interviews occurred in early 2003, and the FBI also questioned other Muslim men on charges of violating the U.S. sanctions against Iraq³⁶ in a ruling in a case challenging expanded surveillance provisions of the USA PATRIOT Act, a federal court described how one Help the Needy donor, Magda Bayoumi, was interviewed by two FBI agents at her home because of her donations to the charity.³⁴

A Muslim community attorney in Michigan who has provided legal advice to Muslim donors told the ACLU that the FBI practice of interviewing Muslim donors has a direct chilling effect on Muslim donors' ability to give Zakat. He explained, "The FBI go to donors, work and ask why do you give money to this charity, what do you know about it, why, how much do you give? Do you have a headache, the government makes the donor feel like he has done something wrong, like he shouldn't donate, and so the government is discouraging people from giving Zakat."³⁸ He added, "I have people asking me all the time, 'Should I donate, will I get in any trouble if I donate?' I tell people they should give, but that doesn't mean the government isn't going to knock on your door and ask you about your donations."³⁹ According to another Michigan-based attorney who has received requests for legal advice from Muslim donors about their charitable giving, "There is a cast of suspicion on some donors. Donors would call me and say, 'Hey, I got a call from the government, and ask 'Can I continue to donate?'"⁴⁰

According to a lawyer who represented Muslim donors interviewed by the FBI two years consecutively, "It was very obvious to me the second time [the FBI] came [to my clients] it was to say, 'If you keep giving, we'll keep coming back at you.' I thought it was a move to intimidate, and every one of my clients felt that way.... Everyone had the same conclusion, which was this was an investigation to make sure people are intimidated and scared, to cut off funding to Muslim children abroad."⁴¹ According to the lawyer, "Everybody became aware that they were being targeted, and that was a real alarm. It had a lot of people taking the attitude that we don't want to take on any trouble, so we won't donate, or they started donating exclusively in the United States."⁴²

A former employee of LIFE told us, "The FBI went to some donors and asked them those 'innocent' questions, like 'Did you give to LIFE?' and 'How much did you give?' They just want to intimidate

about their donations, so lots of people saw that because of their donations people ended up on a list and it caused them to be scared.⁷⁴

In addition to FBI interviews of donors at their workplaces and homes, the ACLU received reports of subpoenas of donors to Muslim charities to testify in grand juries, further contributing to the climate of fear among Muslim donors.⁷⁵ At least one donor

“Our whole community was approached by the FBI about our donations. They’ve intimidated our whole community. They’ve been asking about every single Muslim charity. Everyone is aware of this. People aren’t giving as much as they should be giving, because of this.”⁷⁶

to LIFE was subpoenaed for a 2007-2008 grand jury proceeding in Michigan, and a question reportedly raised during the grand jury proceeding was the identity of the charity’s major donors.⁷⁷ Muslim donors also were subpoenaed to testify in a grand jury in Missouri apparently focused on IARA.⁷⁸ The ACLU also received reports that a donor in Louisiana was subpoenaed for a grand jury because of a donation she gave to HLF during the last days of Ramadan.

Furthermore, the ACLU received reports from U.S. citizen and lawful permanent resident Muslims about intrusive questioning by Customs and Border Patrol agents about their charitable donations upon returning home after overseas travel. One donor told the ACLU,

I was a donor to HLF, LIFE, Islamic Relief, All of them were active and came to my mosque, and I donated.... Since 2001, each time I travel

overseas, about two to three times a year, when I come back to the U.S.A, I am stopped, pulled from the plane, and asked questions for two to three hours by Customs and Border Patrol agents. Ninety percent of the questions are about money, donations are a big part of the questions. They ask, “What organizations come to the Islamic Center, Philadelphia, for donations, who do you give donations to?”⁷⁹

David Weid, the Executive Director of the Michigan office of the Council on American Islamic Relations (CAIR), a Muslim advocacy organization, told us, “I know of a couple of cases of donors to our organization being asked about donations to CAIR.”⁸⁰ Walid added, in one case, “A Pakistani gentleman gave not a large donation, a \$2,000 donation, and when he came back into the country he was detained by Customs and asked about his donation; they asked him if he knew what kind of organization CAIR is. That donor has not given us a single donation since then.”⁸¹

In an April 2009 report, advocacy group Muslim Advocates documented U.S. Department of Homeland Security Customs and Border Protection agents’ pervasive practice of questioning Muslim travelers returning home after overseas travel, including detailed questioning focusing on charitable giving.⁸² Muslim travelers reported to Muslim Advocates that Customs and Border Patrol agents asked detailed questions about their charitable contributions, the charities they support, where the Muslim charities they support obtain funding, and their activities on behalf of lawful U.S.-based charitable organizations.

b. Arrests, Prosecutions, and Public Sneering of Muslim Donors

ACLU research reveals awareness among American Muslims that some Muslim donors have been arrested, prosecuted, or suffered public allegations of supporting terrorism because of their donations to legally operating Muslim charities in the United States. While the arrests and indictments in some of these cases were not officially related to the donors’ charitable contributions, press reports on these cases and public allegations linking suspects to the Muslim charities they gave to has fueled speculation among American Muslims that donors to Muslim charities were providing evidence to the FBI. Muslim donors are being targeted for enforcement on account of their charitable giving. Interviews also pointed to cases of public sneering of Muslim donors for their charitable donations as further evidence that Muslim donors are suffering damaging and public allegations on account of their charitable giving to legal Muslim charities. These well-publicized cases are compounding American Muslims’ anxiety about making charitable contributions in accordance with their faith.

In one well-publicized case, wealthy Palestinian-American entrepreneur Jesse Maali was arrested in Orlando, Florida, in a November 2002 raid coordinated by local press who reportedly were tipped off by federal agents.⁸³ According to the Washington Post, Maali’s donations to Muslim charities “attracted the attention of federal prosecutors, who said that Maali had links to Middle Eastern groups that advocate violence because he gave tens of thousands of dollars to those organizations.”⁸⁴ Maali was charged with employing undocumented workers at stores he owned and money laundering for creating a scheme to pay undocumented workers off the books. Although Maali was never charged with material support for terrorism, a central issue in this case was donations he had made to Muslim

charities, including the Holy Land Foundation for Relief and Development (HLF) and Benevolence International Foundation (BIF) between the mid-1990s and 2000, before these charities were designated and shut down.²⁴ In requesting that Maali be denied bail, an Assistant U.S. Attorney claimed that the fund had been used to support and educate the Islamic militant Middle East. He also said that FBI agent Stephen Tomes described BIF as the "financial arm of Al Qaeda" although Maali's link to the charity dated back to 2000, two years before the Treasury Department designated the charity.²⁵

Although the charges against Maali had nothing to do with terrorism, local press dramatically labeled the case against Maali a terrorism case, and a local television station ran Maali's photograph next to an image of Osama bin Laden.²⁶ U.S. Magistrate David A. Baker, the magistrate judge presiding over the bond hearing at a federal court in Orlando, warned, "There is a great danger that connections and associations can be used to paint with a very broad brush. Simply because someone meets or knows someone...or shares the same characteristics does not make him responsible for somebody else's actions."²⁷ Prosecutors later added tax-evasion charges against Maali after the bond hearing, but no terrorism-related charges materialized.

Maali told the *Orlando Business Journal* in 2003 that the criminal charges and terrorism-related accusations against him had devastated his businesses.²⁸ Maali died of lung cancer in January 2005, before going to trial.²⁹ Maali's trial was delayed because of his worsening health, and a local paper reported that Maali died under a cloud of suspicion from the federal government.³⁰

In another, well-known case, Mohamed Shorbagi, a Palestinian-American and former imam of a mosque in Rome, Georgia, was charged in August 2006 with material support for terrorism on account of donations he made to HLF.³¹ At issue in the case were donations Shorbagi made from 1997 until HLF was shut down in 2001, a period of time when

one such case in Hillsboro, Oregon, software engineer Maher Hawash was arrested and detained as a material witness in March 2002.³² According to the *New York Times* and local press, some speculated that Hawash was arrested because of over \$10,000 in donations he made in 2001 to Global Relief Foundation, when the charity was still legally operating. After five weeks in detention, prosecutors charged Hawash with conspiracy to provide material support for terrorism. Shorbagi agreed to drop charges against him. Prosecutors against the United States and conspiring to provide material support for terrorism, in exchange for testimony against six Muslims in Portland charged with terrorism.

Also contributing to American Muslims' apprehension about charitable giving is the media storm that has surrounded high-profile Muslim donors. In these cases press reports have publicly smeared Muslim donors by linking them to terrorism via their charitable donations. Retired NBA basketball star Hakeem Olajuwon famously became the subject of negative media attention because a mosque he founded and funded had given more than \$80,000 in donations to the Islamic American Relief Agency-USA (IARA), a Muslim charity the Department of Treasury subsequently designated and shut down. Olajuwon's tenuous association with IARA became international news, as press articles linked him to terrorism despite Olajuwon's public statements that he had believed IARA to be a legitimate charity dedicated to helping the needy in Africa.³³ "I took my whole career to build my name and the cause that I choose to support," Olajuwon told the *New York Times*.³⁴ "I took my whole career, and it's difficult to accept when my name is coming linked into anything such as terrorism."³⁵

c. Surveillance of Donations at Mosques

The ACLU documented a widespread belief among Muslim community members in Texas and Michigan that the FBI and police have used and continue to use informants in mosques to monitor worshippers' charitable donations and other constitutionally protected religious activity and speech. While the accuracy of this perception is impossible for the ACLU to determine, some reports confirm that law enforcement have used informants in mosques.³⁶

For example, one New York Police Department informant attended 575 prayer services in New York mosques as an informant, sometimes four or five times a week, in order to monitor the tone of religious services and internal debates.³⁷ In Orange County, California, reports surfaced in March 2009 that the FBI had sent a confidential informant into mosques as a confidential informant to record conversations from July 2006 to October 2007.³⁸ After the revelations about FBI use of the informant in Orange County mosques, a coalition of Muslim community groups in Michigan came forward to ask U.S. Attorney General Eric Holder to investigate reports that FBI agents had approached congregants at Michigan mosques to monitor charitable donations made at the mosques and the people coming to the mosques.³⁹ In another case, the Executive Director of the Michigan office of the Council on American Islamic Relations (CAIR) reported to the ACLU that a Yemeni man recently complained to CAIR that the FBI had approached him and "asked what charities were coming into the mosque and who raised their hand when asked for money."⁴⁰ In addition, according to one news report, in 2008 the FBI launched an operation to recruit and place informants in mosques.⁴¹

In interviews with the ACLU, several individuals reported FBI attempts to recruit them as informants in their mosques, to monitor charitable donations and speech at their mosques. Many other

(clamps hand over mouth). It is a feeling of uneasiness—we don't understand what they're here for, what they're trying to prove. They tell us they're here to build bridges. After getting slapped in the face, who is going to believe in a bridge? ... According to her, because of the government's intrusion... (more people in the US are coming to pray at home, in their own backyards and prayer in the congregation). There is a lot of suspicion and fear. We've moved away from being in the mosque as much."²⁹

The ACLU is concerned that a recent major expansion of FBI investigative powers in the final days of the Bush administration allows racial profiling to further creep into law enforcement and permits suspicionless spying on individuals' religious activities at their places of worship. New FBI guidelines released by the Bush administration in October 2008 and effective December 1, 2008 replaced existing bureau guidelines for five types of investigations. The new guidelines reduced standards for beginning "assessments" (precursors to investigations), conducting surveillance, and gathering evidence, meaning the threshold to beginning investigations across the board was lowered. Under the revised guidelines, FBI agents no longer need "factual predication" to use paid informers, spy on a person's activities, or engage in other types of intrusive surveillance; all that will be necessary is a hypothetical "threat." More troubling still, the guidelines allow a person's race, religion, or ethnic background to be used as a factor in opening an investigation, opening the door for use of racial profiling as a matter of policy.

As amended, the Attorney General's Guidelines on General Crimes, Race-Relevant Enterprise Allow "assessments" of non-criminal activity, which may include collecting information about people not suspected of misconduct to create profiles on individuals and groups. Even in the absence of any particularized indication of criminality or risk to national security, FBI agents conducting an "assessment" are now authorized to misrepresent

the perceived use of informants to infiltrate mosques has had a chilling effect on congregants' rights to association, speech, and religion. Some reported limiting their attendance at congregational prayer in mosques and limiting their charitable giving, for fear that an informant was reporting their presence at the mosque or their individual donations were during charitable fundraisers at the mosque.³⁰

In particular, some American Muslims reported to the ACLU that their perception that paid informants are monitoring charitable donations at the mosque has a clear chilling effect on their charitable giving, as much fundraising for Muslim charities and humanitarian aid takes place in mosques. For instance, a Muslim woman who has completely stopped attending fundraising functions at her mosque in Michigan told the ACLU,

Some people are afraid to go to the mosques, and people are afraid to give donations. There are a lot of snitches around here; the government is asking people to snitch on others' donations.... I know a lot of my clients, when they have problems with immigration, the government says "work with us," and they agree and they go to the mosque for the government and watch while they pray. They are like snitches. That's the fear, that people like that are watching your donations. Can you imagine what is happening at the mosque? That's fear.... People always tell you that there are people watching in the mosque.³¹

A Muslim woman in Texas told the ACLU that two FBI agents had been at her mosque and had asked her husband about his religion as an informant. She told us that the presence of FBI agents at her mosque has led her to stop worshipping there and to drastically limit her attendance at events at the mosque. She explained, "Two carrying FBI agents pray at our mosque and have approached my husband at our mosque. They pray at our mosque—you can imagine what this does



Worshippers pray at Masjid Al-Salam mosque in Memphis, Tennessee, during the Muslim holy month of Ramadan. (Photo: DUK/Memphis Commercial Appeal)

The infiltration of mosques to investigate people not suspected of wrongdoing, and the use of paid confidential informants to infiltrate places of worship, the FBI does not have any reason to suspect of breaking the law, raises serious concerns about religious and ethnic profiling. While informants have long served a key role in law enforcement investigations, the use of informants at places of worship without suspicion of criminal activity is troubling. Law enforcement agencies should limit use of informants at places of worship to instances where there are grounds for suspecting criminal activity.

individuals reported knowing of other Muslims who had been approached as potential informants but were too fearful to talk publicly about the experience. One Muslim man in Michigan told the ACLU,

"Two FBI came to my house...they offered me a deal—they say that I can work with them and they will help me to get citizenship. They ask me who at the mosque has extremist ideology. They keep trying; they say 'We will come back to you again, to ask you again to work with us.' They said 'We know about your problem', because I have waited three years since I applied for citizenship, and it wasn't given to me. They said 'We know about this, and we can work on it, give you whatever you want...'³²

their identities to gather information, to ask undercover informants to attend meetings, events, and even worship services, and to engage indefinitely in surveillance of homes, businesses, and individuals. The new guidelines put into place last December, allow surveillance suspiciously similar to the domestic spying program known as COMINT PRO, which was authorized in the 1950s and 60s to monitor dissenting voices suspected of being "communist" lies, which included university professors, labor groups and civil rights advocates, including the late Dr. Martin Luther King, Jr.

"Some people are afraid to go to the mosques, and people are afraid to give donations. There are a lot of snitches around here; the government is asking people to snitch on others' donations."

Under previous FBI guidelines, law enforcement already was permitted to check leads and conduct preliminary inquiries with the thinnest of predication. In testimony before the U.S. House of Representatives on September 16, 2008, FBI Director Robert Mueller insisted that the FBI interpret its authorities under the previous guidelines to allow the use of intrusive investigative techniques even without any factual predication in violation of the guidelines. The ACLU has called for the Department of Justice Office of the Inspector General (OIG) to investigate whether the FBI violated the previous guidelines, examining in particular the manner in which the FBI used race, religion, national origin, or First Amendment protected activities in determining whether to initiate, expand, or continue an investigation.

will not give me assurance that if I am a donor I will be safe and will not be questioned or prosecuted." According to Hamad, "What is legal today could be illegal in seconds. When people ask the Treasury Department, I want to obey and respect the law, but how can I know as a donor that my donations are safe and legal if the government is going to change the rules? For the donors, the donor has to put the burden on the charity. The donor has to know something about the charity, its board, its programs, where its money goes. If the charity is legal then why isn't the donation legal?"³¹

National and local Muslim leaders told the ACLU they receive numerous queries from Muslim donors about their liability for charitable donations, but federal law enforcement and Treasury Department officials refuse to provide guidance to community leaders on how to respond to these queries. The national legal advisor of the ADC estimated that during Ramadan, their office receives about 100-150 queries from Muslim donors each month from across the country, asking whether it is safe to make charitable donations.³² And yet at national roundtables with the Department of Treasury and Muslim community leaders held in Washington, DC, Treasury Department officials have similarly refused to provide reassurance for donors. The ADC's national legal advisor told the ACLU of these roundtables, "We can have a six-hour discussion [with Treasury] and five hours of it will be about one question: if I give in good faith, with the intention to give to charity, and Treasury comes down on the charity later, will I be in trouble? They will never give us a straightforward answer."³³

Donors repeatedly expressed frustration that the Department of Treasury and federal law enforcement did not provide them with requested guidance on how to avoid violating the material support laws when making charitable donations. One Muslim donor in Texas asked, "Is it really my obligation as a U.S. citizen to decide that a charitable organization is legal [to donate to]? It is my responsibility that after the U.S. government blacklists

an organization, then I don't donate to them. But before that point it should be the government's responsibility to evaluate the organizations. If the government gives the organization 501(c)(3) status, then I should be able to donate to that organization. If I acted on all the available information at that time and made the choice, then you can't blame me for that choice in the future. I have to say that I am responsible for giving to an organization that was legal at the time?"³⁴

"What is legal today could be illegal in seconds. When people ask the Treasury Department, I want to obey and respect the law, but how can I know as a donor that my donations are safe and legal? the government's answer is: 'you do your homework as a donor.' If the charity is legal then why isn't the donation legal?"

A Muslim donor in Michigan expressed similar frustration, noting, "We had a meeting once with officials from the U.S. government who came from Washington to Dearborn, to meet with the Muslim community. They were saying it was our responsibility, the people who are donating, to know that the money we donate is going to the projects that we want to support. But we said that if that organization has a license how are we to know [it is funding terrorism]? They say that it is our responsibility, but I can't imagine how one person can do that. In that meeting, the government said we can be held responsible for our donations—the donors are responsible.... We need the government to assure people that they can donate."³⁵ Another donor told the ACLU, "After 9/11, when we heard about HLF and Benevolence International, it caused a lot of

to the point where I called the FBI and I asked them if I am a contributor to an organization that is later declared a terrorist organization, then can I be held responsible for my donations? I asked, can I be given a list of organizations that are safe to give to? They said you have to do the research yourself, it's your responsibility."³⁴

"You can't put up a blinking light at an intersection and tell me it is your call as a driver whether to stop or not, and then if I go through the light you ticket me. It is like a blinking yellow light over the charity, and it is up to you whether to make your move, and it is up to the police officer to decide whether to ticket you or not. So who defines the law?"³⁵

Lack of clarity on the rules regarding charitable donations and donor liability for donations made in good faith creates confusion among donors who want to comply with the law. As Imad Hamad told the ACLU, "You can't put up a blinking light at an intersection and tell me it is your call as a driver whether to stop or not, and then if I go through the light you ticket me. It is like a blinking yellow light over the charity, and it is up to you whether to make your move, and it is up to the police officer to decide whether to ticket you or not." Donors' fears of being subject to enforcement of the criminal material support laws are not unreasonable, given prosecutors' use of the material support statutes to prosecute minor offenses (detailed in section III of this report, "Expansion of Prohibited Material Support").³⁶

A former Treasury Department official, who served under the administration of President George W. Bush and asked not to be named, told the ACLU,

"The U.S. government doesn't tell the Muslim world, explain to the public, that there is a charity they can give to because they are under investigation. You could think you are giving to a good charity and six months later it may be designated, but it may be under investigation right now. There is no way to know. I don't know if you are talking about the Office of Terrorist Financing and Financial Crimes (OTFFC), one of their jobs is Muslim outreach, and they should try to make it easier for people to give to clean Muslim charities. They haven't helped people to pick the right charities. I haven't seen anybody mount an effort along these lines.... That would help; then Muslims giving would feel reasonably sure that they can give to a charity."³⁷ He added, "I think Treasury needs to be more specific about where it is okay to donate. That would force a change of policy. There need to be some guidelines provided, a sense of what charities are better or cleaner. That goes to OTFFC, and I don't think they've done a sufficient job of letting the Muslim world know where it is okay to donate.... I think it all comes down to OTFFC doing a better job of reaching out to the Muslim world [in the U.S.]."³⁸

Moreover, while the government remains silent regarding donors' retroactive liability for donations made in good faith, some statements by government officials have indicated to some Muslim donors that they could in fact be investigated or prosecuted for their donations. For instance, on the Friday before the Monday raid of Life for Relief and Development in Michigan, an FBI special agent told local Muslims that any large contributions to any mosque organization might be questioned.³⁹ In 2009, the FBI advised that "a little old lady in Switzerland" could be held as an enemy combatant for giving money to a charity for an Afghan orphanage, if the money was passed to al Qaeda without her knowledge.⁴⁰ These public statements by law enforcement and Department of Justice officials shape the Muslim donor community's understanding of the unclear message sent by government representatives who conspicuously refuse to reassure donors.

VII.
Charitable
Giving in Islam

a. Zakat as a Religious
Obligation to Tithe

The obligation to give Zakat (charity or alms) is one of the core "five pillars" of Islam, the five duties considered essential for all Muslims (Shahada, profession of faith; Salat, prayer; Zakat, giving of alms; Sawm, fasting during Ramadan; and Hajj, pilgrimage to Mecca). The obligation to give Zakat is seen as a sacred duty for all observant Muslims. It bears some resemblance to the giving of tithes by Christians, although the rules and applications are different. Some people who are interested in the technical aspects of giving Zakat, the basic rule is that all observant Muslims who have the ability to do so should donate a certain portion of their wealth every year to appropriate recipients.²⁷¹ In Islam, Zakat is distinguished from Sadaqah, a discretionary form of charity that is not obligatory.

The ACLU interviewed eight Sunni and Shi'a imams who explained that at the annual gathering of the Muslim community that worships in their mosques. A Sunni imam in Michigan, Sheikh Mohamad Musa, explained to the ACLU, "Zakat is one of the most important pillars of our faith.... People believe it is one of their duties to poor people, the needy. It is mandatory to give Zakat; it must be done, according to the teaching of Islam. The importance of Zakat in Islam is huge; it's one of the rights of poor people to receive Zakat, and it is obligatory for people to give Zakat." Imam Sayid Hassan Al-Qazwini, a Michigan-based Shi'a imam, explained, "Zakat is mandatory in our

religion. You have to pay 2.5 percent all the way to 10 percent of your income, or surplus income, depending on your school of Islam. You have to give it."²⁷² An imam in Texas, Yuseen Sheikh, told the ACLU, "Zakat is a moral and religious obligation every Muslim person has. And people do this because of their respect and reverence for God."²⁷³ Imam Dr. Yusuf Z. Kawacki, a Texas-based imam and scholar of Islamic law, said,

Zakat is one of the main pillars of Islam mentioned in the Qur'an a hundred times over in the imperative form—as in you must do this. This is one of the very, very important, clear-cut characteristics of Islam: go on Hajj, prayer, fasting, declaration of faith to Allah and Mohammed as his messenger, and Zakat are part of the very definition of Islam. These separate Islam from other religions. Zakat is a very important act that needs to be practiced by all Muslims.²⁷⁴ American Muslims assign considerable importance to the fulfillment of Zakat as a religious obligation included in the five pillars of Islam. A 2007 Pew Research Center survey of 40,000 American Muslims found that about three-quarters of Amer-

"Zakat is a moral and religious obligation every Muslim person has. And people do this because of their respect and reverence for God."

ican Muslims (74 percent) say that giving Zakat is "very important" to them.²⁷⁵ Only a small minority of American Muslims surveyed (8 percent) said that the practice of giving Zakat is "not too" or "not at all important." In fact, more than 300,000 adults found that American Muslims are more likely to give to charity than the general

"Giving Zakat is such an important piece of Islam—it is a way to cleanse yourself, to purify your earnings, to help others who are another of God's children and are less fortunate. It is a declaration of faith. You have five pillars, and those pillars hold up Islam. If you take away a pillar that holds up a foundation, that makes the building weak. Zakat is the middle pillar; without that your faith is weakened."



Members of a Muslim congregation in Virginia give Zakat donations for the needy before they enter a mosque for a service to mark the conclusion of the holy month of Ramadan, the height of annual Muslim charitable giving. Zakat is one of the core "five pillars" of Islam and a religious obligation for all observant Muslims. (Alex Wong/Getty Images)

satisfies God. In Islam, the whole objective of a Muslim is to praise God, to recognize what He has done for you and given to you, to give out of the bounties that God has bestowed upon you.... Giving Zakat is such an important piece of Islam—it is a way to cleanse yourself, to purify your earnings, to help others who are another of God's children and are less fortunate.... It is a declaration of faith. You have five pillars, and those pillars hold up Islam. If you take away a pillar that holds up a foundation, that makes the building less stable. It is in the same way of the building. If it is the middle pillar, the third pillar. Without that your faith is weakened.³⁶

In interviews with the ACLU, observant American Muslims described the personal significance they ascribed to fulfillment of Zakat as a religious duty. One Bangladeshi-American Muslim explained the importance of Zakat according to his religious beliefs:

The third pillar of Islam is Zakat, the obligation to give to charity. For us in Islam, God ordained that 2.5 percent of what you earned isn't yours. It's God's right to take away.... I know that to help those who are suffering

The observant American Muslims we interviewed consistently described Zakat as a pillar of Islam, and highlighted its importance in their faith. Observant Muslims interviewed by the ACLU also commonly reported that the religious obligation applies to all Muslims, including non-American Muslim explained, "We want to exercise all the freedoms that come under the scope of our religion. We don't want just to pray. There are five pillars of Islam, and we want to exercise all five pillars. One of these pillars is charity, and if you take away charity, you take away a pillar of our religion."³⁷ Another man explained, "Zakat is one of the five pillars of Islam. It is like any other pillar, and we believe that to be a good Muslim you have to be a good Muslim all the way; you can't just pray or fast, you need all the pillars."³⁸ An Afghan-American Muslim explained that according to his religious beliefs, "We are obligated to give alms, to give the Zakat money. It is not an option, it is mandatory that all Muslims give 2.5 percent of their wealth.... God almighty says in the Qur'an that 2.5 percent of your wealth does not belong to you, it belongs to the orphans and the poor and those who are struggling and cannot sustain themselves."³⁹ Another Muslim highlighted the frequency of verses pertaining to Zakat in the Qur'an: "Zakat is very serious and often mentioned in Islam, every 10, 15, or 20 verses of the Qur'an. We must give diligently and calculatedly."⁴⁰

Some Muslims told the ACLU that they viewed Zakat as a way to purify themselves or their wealth, and others described the money obligated to be given as Zakat as a burden that weighed heavily on them until they gave it away as charity. One Muslim told the ACLU, "Zakat is a punishment. We have to purify our money, get rid of some of it. It is also supposed to wipe out sins, and when you give the money it comes back at you in happy ways."⁴¹

"Giving Zakat is such an important piece of Islam—it is a way to cleanse yourself, to purify your earnings, to help others who are another of God's children and are less fortunate. It is a declaration of faith."⁴²

The different schools of Islamic theology do not provide a uniform answer to the question whether the religious obligation of giving Zakat has been satisfied if the donor makes a donation to a charitable institution, but the funds are subsequently seized (such as by the U.S. government) before they can be distributed to the intended recipients. The ACLU's research makes clear, however, that for a sizable number of American Muslims, the government's seizure of Zakat that they gave means that they have been prevented from fulfilling their religious obligation; government action has thus impinged on their ability to fully and freely exercise their religion. While the government's action created a chilling effect in the Muslim community, many are fearful of participating in this religious duty in the way that most corresponds to their religious beliefs. Section VIII of this report details the chilling effect on Muslims' giving of Zakat in accordance with their religious beliefs, as well as the consequences of the government's continued withholding of seized Zakat money on some Muslim donors' religious rights.

b. Preferred Recipients of Zakat as Defined in Islam

For the most part, Zakat is traditionally given to the poor, the needy, and the sick (Qur'an 9:60), but in general, it also is appropriate to give it for the construction of mosques and other recognized charitable and religious activities. Some Muslims believe that Zakat must be given to other Muslims, though there is not unanimity in this belief. Whichever an individual Muslim believes that Zakat should be given only to other Muslims, all Islamic schools of thought have rules on who is and is not a proper recipient.⁹⁻⁶⁰

The Qur'an specifies eight permitted classes of beneficiaries of Zakat: the poor, the needy or very poor, the people applying for loans or advances for Zakat, those who are unable to fast, those who are unable to fast because of illness, such as teaching in God's cause, and, travelers (Qur'an

Many American Muslims reported that because of the closure, and in some cases prosecution, of Muslim charities that provided humanitarian assistance overseas or funded orphan sponsorship programs overseas, they felt that they could not fulfill their religious obligation to give Zakat to these preferred or mandatory beneficiaries of Zakat.

two traditional recipients of Zakat, travelers and prisoners.⁹⁻⁶¹ The hadith (sayings and deeds of the Prophet) outline these categories in great detail, and Islamic jurisprudence has developed detailed rules regarding proper recipients of Zakat, collection practices, rates of giving, and exemptions. There are differing interpretations among Islamic schools of thought and authorities regarding these categories of recipients of Zakat.⁹⁻⁶²

In interviews with the ACLU, numerous Muslim donors explained their understanding of the categories of preferred or permitted recipients of Zakat. Some Muslims stated that according to their religious belief, they strongly preferred or felt obligated to give Zakat to orphans. According to one donor,

Orphan sponsorship is an absolute obligation for all Muslims. If you were to read the Qur'an, orphans are mentioned every few pages, every chapter. It says so often "take care of the orphans," and there are so many examples and details about how to provide and care for them. There is a verse of the Qur'an that says he who devours the wealth of an orphan is swallowing fire into his belly. There is another Quranic verse that if you are unable to give money to orphans, then give them a kind word and they are your brothers in faith.⁹⁻⁶³

Many American Muslims reported that because of the closure, and in some cases prosecution, of Muslim charities that provided humanitarian assistance overseas or funded orphan sponsorship programs overseas, they felt that they could not fulfill their religious obligation to give Zakat to these preferred or mandatory beneficiaries of Zakat. Section VII of this report details this impact on American Muslims' ability to fully and freely exercise their religion.

9-60. In some schools of Islamic interpretation, the categories of the poor or needy include certain sub-groups, including orphans, widows, students, and prisoners and their families. As refugees have become an increasingly important category of Zakat recipients for some Muslims, who view refugees as the modern-day equivalent of

"I'm so scared to give charitably. They might come after me. I think when I'm giving, will they come after me? Will they put me on their hit list? There is a constant worry in the back of my mind. I fear giving more would put me on the hit list, and the government will say there is a linkage between me and the charity. Because everything is under scrutiny, I am not able to fulfill my religious obligation to give—because I am just afraid."

VIII. Chilling Effect on Muslim Charitable Giving and Impact on Religious Freedom

The ACLU documented a pervasive fear among Muslim charitable donors that they may be arrested, prosecuted for material support for terrorism, interviewed by law enforcement, subpoenaed to testify in a criminal case, subjected to surveillance, deported or denied citizenship or a green card, or otherwise implicated because of charitable donations made in fulfillment of their religious obligation to give Zakat. American Muslims told the ACLU that the government's designation, seizing of assets, and law enforcement raids of Muslim charities; criminal prosecution of donors to Muslim charities; and criminal prosecution of Muslim charity leaders have chilled their charitable giving and limited their free and full exercise of their religion through charitable giving.

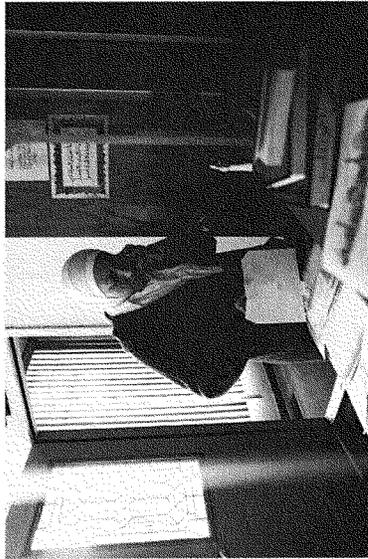
The ACLU does not suggest that the right to give donations in the name of Zakat is absolute, and neither does it maintain that donations made in the name of Zakat are immune from government scrutiny, regardless of the circumstances. It is the chilling effect on charitable donations made in good faith and intended to be used only for humanitarian purposes that raises constitutional and human rights concerns.

a. Chilling Effect on Charitable Giving (Zakat) Due to Climate of Fear

I feel this is part of my religion, part of my faith, that I have to help through donation, to needy people in Palestine or Bangladesh, people living in war or occupation, people suffering a disaster like an earthquake. Now I can't make donations—it's clear to everybody you can't give to Muslim charities.... Since HLF was closed, now there is no way to give in a way that is clearly legal. We don't know how to give now, and there are no other options. I don't know how to give now. I don't know how to give now, and this means I cannot comply with my religion. Even international law says I can help people in need according to my religion.

—Jamal Eldine Saith, Plano, Texas³⁷

The government's designation, seizing of assets, and law enforcement raids of Muslim charities; interviews of donors to Muslim charities and criminal prosecution of Muslim charity leaders have created a chilling effect on American Muslims' charitable giving. In interviews with American Muslim donors, the ACLU documented a pervasive fear among Muslim charitable donors that they may be arrested, prosecuted for material support for terrorism, interviewed by law enforcement, subpoenaed to testify in a criminal case, subjected to surveillance, deported or denied citizenship or a green card, or otherwise implicated because of charitable donations made in fulfillment of their religious obligation to give Zakat. American Muslims told the ACLU that the government's designation, seizing of assets, and law enforcement raids of Muslim charities; criminal prosecution of donors to Muslim charities; and criminal prosecution of Muslim charity leaders have chilled their charitable giving and limited their free and full exercise of their religion through charitable giving.



The leader of a charity in Dearborn, Michigan, who says sanctions have taken because of fear climate of fear. The government's actions have created a general climate in which, law-abiding American Muslims fear making charitable donations in accordance with their religious beliefs. (Fahimza Coakley/ New York Times)

our religion to the extent we are obligated to do so. This is why the Pilgrims sailed here, for religious freedom. I don't have any religious rights anymore. I ask am I living in America? It is disheartening, disappointing. I feel that I am not free. My intention has been to give, but the circumstances are such that I cannot give.³⁷

A Palestinian-American man described a similar impact on his ability to practice his religion. "I am not able to pay Zakat anymore. I feel like I am doing something wrong by paying Zakat. I am not able to pay Zakat as I am supposed to, because I fear I will get in trouble and be questioned about my giving."³⁸ He added, "It is a big impact. Before, I was giving to any Muslim charities that help the Muslim community, if it was a humanitarian organization. There were a couple of good ones, but the government shut them down and named them terrorist organizations. Now we are scared to give to any. After what we're seeing from the Bush administration, and too many innocent donors being questioned, I just stopped. I'm not giving anymore."³⁹

For some Muslims the ACLU interviewed, their failure to fulfill their obligation to give Zakat brings serious consequences for their religious standing, and many donors spoke poignantly of this personal impact of terrorism financing policies and practices. One Lebanese-American Muslim told the ACLU, "My religious standing is affected because the atmosphere of fear affects me. It depends on the person; not everybody is strong enough. For me, personally, this was a factor that affected me. I wasn't strong enough, so one of the pillars of my religion is not being fulfilled properly, as it should be... you are not fulfilling your pillar of Islam."⁴⁰ Zakat is one of the five pillars of Islam. The ACLU "I am backed out of my religious obligation in the longer term, it has an effect, a cumulative religious effect, because I fear donating to Muslim charities or to the mosque."⁴¹ Another donor explained, "Closing down the charities, you are getting to the spiritual essence of the human being. Every person needs to give to charities as a person, and the government has closed this off."

religious obligation, to feel good as a person, and the government has closed this off."⁴²

An Egyptian-American explained that being unable to provide assistance to the needy is significant to him; it really hurts to not be able to help someone in need. He said that he has to be a coward and cannot help her because I know the government can fabricate charges because I wrote the check. Every day I am thinking about that girl I have not helped and am thinking what a coward I have become.... I don't see any other thing that

"Closing down the charities, you are getting to the spiritual essence of the human being. Every person needs to give to charities as a religious obligation, to feel good as a person, and the government has closed this off."

can be worse than this: if I am supporting a religious child somewhere and the government says I can get in trouble for it, lying my hands to prevent me from doing what is right."⁴³ He added, "It is making me try to be a better Muslim, but it breaks my heart and makes me feel bad that I cannot do what I have to do. It makes me sad and upset—it makes me cry sometimes—that I cannot help."⁴⁴

Other Muslim donors reported that their fear has caused them to substantially decrease their charitable donations, to as little as 10 percent of their previous charitable giving. These donors reported that the decrease in their donations occurred prior to the recent financial crisis. In these cases donors were clear that the decrease in their donations was directly caused by their fear of the consequences of donating. For instance, one donor explained:

i. *Fear of Criminal Liability for Donations to Legal Charities*

rely on God, but I cannot assure them. What can I tell them?⁴⁰

Another imam in Michigan told the ACLU, "For sure, in the last few years, I have seen the fear existing in some people, the fear of donating to a charitable organization and even my mosque. You can feel this fear in the community... The imam added, "In general, I believe that the fear of terrorism is not there in the past. I see this fear all funded in the mosque down 50 percent or even lower. I think the government has influenced on people's giving. The way the government closed some of these charity organizations, the way the government treated them, and got the information from the charities' computers including the names of the donors, that causes a psychological fear in people's minds. Everybody cares about their family, their business, their jobs. People don't want to get into trouble."⁴¹

The ACLU did interview some donors who reported their charitable giving has not been affected by U.S. government policies and practices, but these donors were very few in number. In general, the donors whose giving has not been affected are U.S.-born Muslims in their teens and early twenties (some of whom did not earn enough money to give charity) and African-American Muslims who had always directed their donations to community groups other than Muslim charities.

In the cases of those whose charitable giving has been affected by terrorism financing policies and practices, Muslim donors articulated to the ACLU various consequences they feared if they give Zakat. The following sections detail each of these major concerns of American Muslim donors: fear of criminal liability for giving to legal Muslim charities, fear that they would be targeted for law enforcement, fear that views for exercising their religious obligation to pay Zakat, and fear of immigration consequences, such as deportation or denial of citizenship or a green card, because of their charitable donations.

Religious leaders confirmed in interviews with the ACLU that they have observed a chilling effect on their congregants' charitable giving, and an impact on congregants' ability to fulfill Zakat. An imam in Texas explained, "The willingness of the people [in my community] to give dropped to 30 percent or less. People might forget their obligations to the government, but they don't forget their obligations to their business, put them on the blacklist. Part of their religion is curtailed—they cannot pay Zakat, and

"People are scared to donate, because the government might target them, investigate their business, put them on the blacklist. Part of their religion is curtailed—they cannot pay Zakat and support the needy. The goal is to stragulate an important part of our religion. Effectively, practically, it affects our practice of our religion."⁴² An imam in Michigan explained, "We have noticed the effect of [the closure of Muslim charities]. We have noticed a huge decline in the events pertaining to charities, and a significant drop in the amount raised... Many of our donors are afraid to give Zakat, and Zakat is mandatory in our religion. They see the local charities are scrutinized, suspended, raided by the FBI, and they are very scared and don't want to get involved... People are afraid and they ask, will I get in trouble with the government? People are apprehensive. I tell people give your Zakat and trust and

The closing of HLF was a major blow, not only because it was a major charity, but also because of the U.S. government arrest of some well-known brothers in the community. That created an atmosphere of intimidation, and now we are afraid to support the mosque and the overseas. This atmosphere affected me. The amount of my giving has definitely gone down. In the first year after HLF closed I didn't donate any money at all. For years now I have given less money... I used to mainly pay my annual Zakat to HLF, sometimes in the thousands [of dollars], say \$1,500 at a single HLF fundraiser. After HLF was closed everything stopped. Now I donate 10 percent of what I used to donate, because of the fear factor, the fear that the U.S. government will somehow intimidate me."⁴³

Many donors expressed concern that they cannot find a "safe" Muslim charity to which they can donate without fear of reprisal. One former Treasury Department official told the ACLU, "This is the biggest problem that the Muslim American community has; they feel there is nowhere to give to."⁴⁴ A donor explained, "The closing of HLF has had a severe impact on my general giving because you can barely find a place to give charity to without the fear of being questioned or looked into for giving... Since then we are hardly giving anything... The amount I give is much less... it has gone down a lot... Overall, the government is creating an atmosphere of fear, of intimidation, creating a collective sense of worry before doing something innocent. As far as giving, that has been reported to be under investigation. Donors reportedly expressed the perception that the only Muslim charity that remains an option is the UK-based Islamic Relief, because of the common perception that the U.S. government will not close the charity due to Prince Charles's outspoken support for it."⁴⁵

and transparent and working with the government, what is to guarantee that the government will not shut it down? The fear that keeps me from donating—isn't the shutting down; it is the guilt by association. We find these people guilty, we will blame the donor. I am not a donor. I am not. I told the ACLU that his fear of accusations has chilled his religious practice of making charitable donations:

The government is making accusations right and left, and this has had a chilling effect on our ability to practice our religion. I haven't been able to give. We have seen different natural disasters across the world, but when we wanted to give to a Muslim charity for religious purposes we couldn't. We have been afraid; there is a fear in the community, that if we give, we will be found guilty by association, we'll be caught in this big dragnet.... I am one individual, how am I to protect myself if I am unfairly accused? I fear being dragged into an investigation, being labeled as someone who supports terrorism.⁴²

A doctor told the ACLU that fear of criminal charges has led to a 50 percent drop in his donations and affected his religious freedom. He noted, "My donations decreased since the government has accused Muslim and Arab charitable organizations of funding terrorism. It affected my donations, because I don't want to be accused of anything and have to go through legal channels to clear my name of false allegations. Fear, accusations that are difficult to defend. I want legal effort to defend me, but I can be defenseless in the money effort to defend me. The only way around it is either to stop donating or to donate only in small amounts, because they seem to go after the large donors."⁴³ The doctor further explained, "My own donations have gone down, they are down at least by 50 percent... because I fear the accusation at some point that the money went to supporters of terrorism under U.S. law. It has diminished the amount of money I can donate—even during Ramadan I can see the

amount I give has gone down significantly. This affects my religious rights."⁴⁴

Many donors reiterated this concern that they could be liable for their donors. These donors stated that they had been negatively impacted by extension, their religious freedom:

"Being a Muslim, now if we give charity we have the fear that we will be prosecuted or there will be a knock on the door from the FBI. It is a very critical situation. We are living in fear; that is a fact. Track the money, but give me the freedom to give."⁴⁵

"Every decent, law-abiding citizen wants to stay away from being dragged into court or criminally charged with being on the wrong side of the law. So when I see on the news that the government is bringing a charitable organization to court, and the government is so powerful they can look back and see who gave donations, you try to stay away as far as possible."⁴⁶

"I fear that since I give to Islamic Relief, if it is closed down, then my name will be on a list of donors. Then what will happen to me? We are all living in fear."⁴⁷

"Financial transactions are being monitored, and the HLF probably had lists of their donors. Do I want to put the welfare of myself, my family, my children in the hands of some prosecutor, for example? I am not a member of an association because of donation? No, I have to protect my family."⁴⁸

In addition, numerous donors pointed out that they believed only Muslim donors bear the burden of fearing criminal liability for their donations made in good faith. According to one community leader in Michigan, "Donors are fearful about their liability for donations. Unfortunately that liability is limited

to those of the Muslim faith. If you are a Christian donor, you don't have to worry. If you ask donors of different faiths if they have any concerns (about their charitable giving), they will not have any concerns (I have to do with the fear of being held liable."⁴⁹

Some donors said that elimination of the possibility of retroactive criminal liability for their good-faith donations would make it possible for them to resume paying Zakat. "I think that the government has to take away this fear of prosecution of the

Case Study: The Story of Samir S.⁵⁰

Samir S. is a Palestinian Muslim professional who immigrated to the U.S. from Kuwait over two decades ago. A taxon, he sponsored an orphan through the Holy Land Foundation for Relief and Development (HLF) from 1992 until the charity's closure. Samir S. told the ACLU that since the closure of HLF has been unable to fulfill his religious obligation to give Zakat. He described his fears and concerns prompted by the government's closure of Muslim charities and intimidation of Muslim donors.

The closing of HLF has had a severe impact on my general giving because you can barely find a place to give charity, in terms of the fear of being questioned or looked into for giving. It also has had a severe impact, in without of the story my wife and I share....

In 1992, when we married, my wife and I gave thanks by sponsoring a child. To Muslims, sponsoring an orphan is one of the greatest things you can do to change the life of a child. I chose HLF because I had heard that it was a good organization. I sponsored that girl until the HLF closed in 2001. From 1992 to 2001, the girl in Bahrain bought her a school package like a backpack through HLF. I sent money monthly and holiday gifts, and I received report cards and updates on how she was doing. One of the charges against HLF was that they sent things to the children of suicide bombers, but ironically the father of the girl was killed for being considered a spy for Israel. A family like that would be boycotted ordinarily. She was an innocent child and we wanted to give her a chance at a normal life. After the closing of HLF all contact has been terminated and we haven't heard about her.

This is something that I am worried about. It is on my mind that if the HLF defendants are found guilty, what is to stop the government from going after the people who gave to the organization? Is the government going to look at the people who supported the organization for 10 years as suspects? I don't see any wrongdoing in what I did, but this is a worry that I have: that we will be suspects even though the organization was legal at the time, and the dollar amount was only \$400, \$700 a year.

Judging by the way things are going, it seems that no one is immune. The government is already targeting close associates (of the charity). When you see how severe the punishment is for

donors along with the charitable organizations," said one donor.⁵¹ These organizations come along and say there are floods in Bangladesh and they have registered with the IRS, which to us is proof that they are a registered, legal organization. (That organization, in the eyes of the government, then does something that is probably illegal, but donors are held responsible for that, not the organization. Instead, "folks that are sponsoring now is the donors are being held responsible, so now I will not donate [to Muslim charities]."⁵²

[others], then you wonder what will be the charges and punishment against people who donated to an organization found to be a terrorist organization. I am afraid that this is something that will come back to haunt me, because I am somebody who donated all these years....

Since then we are hardly giving anything—the amount I give is much less. It has gone down a lot. The orphan sponsorship was itself \$400 or \$700 a year. On average I give \$1,000. My wife and I give it is \$300. This is because the charges brought against people in a lawsuit [sic] make me worried, and I don't want to be accused of something ridiculous that would send me to jail for 20 years. It seems that people are being punished for helping people in need.

A few weeks ago a Chicago charity came to Garland. The charity provides travel expenses to hospitals for traumatized child victims of war to receive medical treatment. The thing that haunts me is what if one of those children they assist is related to someone who did something wrong? How can we investigate every child they support to make sure that the parents or family of 100 percent of the kids didn't do anything wrong? It paralyzes my giving. I can't support anything comfortably anymore, because guilt by association is a big deal, these days....

Overall, the government is creating an atmosphere of fear, of intimidation, creating a collective sense of worry before doing something innocent. As far as giving, I am not free.... Fulfilling Zakat is a major concern for me. Zakat is one of the pillars, one of the obligations of Islam, and there are certain things it has to go to. Sponsoring an orphan is part of Zakat, but with everything going on now I have a hard time finding a place to put my Zakat money to an orphan or student sponsorship. Now every place you can give is a place where you can be accused that the money is being used to help terrorism....

Charity in general is a major part of Islam, but sponsoring an orphan in particular is a big deal in Islam. Part of that is because the Prophet Mohammed was an orphan himself. You'll see that in almost any Muslim country: one of the most common charity projects is an orphanage. We look at it that an orphan is basically helpless. Compensating an orphan with no parent is considered to promise us great rewards in the hereafter, because you have provided for that needy child and have changed their life. For me personally, my wife is an orphan: her dad died when she was four and her mom when she was eight. So it is personal too. In Islam giving money to that cause is one of the most important things you can do.

I am even worried about getting engaged in Islamic Relief [by donating] because who knows what is going to happen tomorrow? The HLF's books were open, and when the government came to them they came back to work with the government. So over the years we were very confident about HLF that it was trusted and transparent. But now even if an organization is trusted and transparent and working with the government, what is to guarantee that the government will not shut it down?

The fear that keeps me from donating to Islamic Relief is the fear that the same thing that happened to HLF will happen again—that everything looks and is fine, and an executive order will shut it down and end it. What worries me isn't the shutting down; it is the guilt by association, that if we find these people guilty, we will blame donors by association. You have done something completely wonderful, something that you feel proud of, but you will be punished.

ii. *Fear of Interview by Law Enforcement*

Most donors expressed fears that they will be targeted for law enforcement interviews for exercising their religious obligation to pay Zakat. The ACLU's research reveals that federal law enforcement is engaging in practices that are substantially contributing to the climate of fear among American Muslim donors. As noted in section VI of this report, many donors reported that the FBI has targeted major donors to Muslim charities for interviews and that the interviews replace their homes with their churches, mosques, and schools on the edge of the activities of Muslim charities locally and nationally. Furthermore, major donors to Muslim charities have been subpoenaed to appear in charity-related grand juries, further contributing to the community's fear.

Muslim community members are acutely aware of these FBI interviews and subpoenas of donors, which many described as outright harassment and intimidation tactics. Many donors reported a strong fear that the same would happen to them if they continued to make charitable donations to Muslim charities as they had prior to the government crackdown on Muslim charities. While donors repeatedly emphasized that they had nothing to hide, they feared that they would be put in a position to defend their donations made in good faith. One donor explained,

I stopped donating money. Because I file taxes I am so concerned about this. I have heard reports about some people who give to an Islamic charity, just small amounts of money, given from a good heart, but then are victimized by it—questioned by the FBI or facing other impediment. I am really afraid and concerned.... I also heard that they watch the bank transactions, all if you give to a Muslim organization you will be investigated.⁹⁷

A Muslim community leader in Texas told the ACLU that fear of questioning by law enforcement about

donations is pervasive among American Muslims in his community. He said, "If until now one organization has been considered to be legitimate and reputable but now is accused of wrongdoing, if I give to another organization it may be accused tomorrow. Someone will knock on my door and say 'You have given money to this organization and it has done some wrongdoing, and they will ask about

"For me to have even my past giving called into question, to an organization that at that time we didn't even know was under investigation—for the government to say we can go into the past and put you under scrutiny for your past giving—that makes me apprehensive about giving."

my donation. People don't want this to happen.... People are scared to give because they don't want to be dragged into a legal battle, to have to talk to law enforcement or in court." He added that this fear is limiting community members' fulfillment of their religious obligation to give Zakat. "This has affected fulfillment of Zakat. An atmosphere has been created in which people don't feel as comfortable giving to charities, or in charity."⁹⁸

A former Department of Treasury official who served in the administration of George W. Bush admitted to the ACLU, "We have inadvertently created an atmosphere where Muslims are getting the message that you can give to a charity and the FBI will be watching you. I know people who you gave to this charity—al-Taqwa Foundation, an African-American Muslim woman, spoke of these fears: 'For me to have even my past giving called into question, to an organization that at that time we didn't even know was under investigation—for the government to say we can go into

the past and put you under scrutiny for your past giving—that makes a difference about giving. My concern is that all of a sudden the government will say this charity is a front for a terrorist organization and all those who gave will be brought in for questioning."⁴²

A number of donors personally knew other Muslims who had been interviewed by law enforcement or immigration agents about their donations. Shadia T. spoke of the chilling effect of seeing her father undergo intrusive questioning by the FBI about his donations to Muslim charities. She explained,

I am not able to fulfill Zakat fully. To be honest, I don't think I paid my full Zakat this year, because it seems every single Muslim charitable organization is under investigation. Zakat isn't meant to be this difficult. This is an obstacle for me, because I don't know where to turn to. I know it's affected me; I feel intimidated all the time, and I would give more if times weren't so rough, but I don't want any readers on me.

"I'm so scared to give charitably. They might come after me. I think when I'm giving, will they come after me? Will they put me on their hit list? There is a constant worry in the back of my mind."

My father got a few calls from the FBI about his donations, and I know by giving in large amounts it attracts the FBI's attention. It's an obligation to give, but it's part of our religion, so we have to give, but I've looked into doing things other than giving money.⁴³

A Pakistani-American woman told the ACLU that because she personally knew a donor whom the FBI had questioned, she had stopped making charitable donations, out of fear the same would happen to her. She said, "The government might come

after me—they might ask me who are you donating to, why are you donating, and for what. Like what happened to a person I know, the FBI. This is not like giving to a person's house. A doctor in Michigan similarly explained, "As a doctor, I am not able to give to Muslim charities because of my religious obligations. I have a lot of orphans, disabled children, other needy people, and we can't practice our religion."⁴⁴

The main thing is not knowing who is going to be targeted and get dragged in for questioning. I know instances of colleagues who have been taken in for questioning by the FBI and Homeland Security people because of their donations. Certain groups are targeted: Muslim charitable donors are primarily targeted, and that makes me uneasy and upset. I have limited my Zakat to a few organizations that I am directly involved with, organizations that I think, I hope, will not be targeted or investigated, like my mosque.⁴⁵

For others, their awareness of FBI practice of interviewing donors prevented them from fulfilling their religious obligation to give Zakat. For instance, a Lebanese-American business owner said she had completely ceased giving Zakat because of her fear of being questioned about her donations: "I have stopped giving, out of fear, because I think there's a list, a blacklist of people who give.... I've watched the FBI. I know I will be harassed by the government if I give."⁴⁶ She added that as a result of her fear,

My donating has changed—I used to go to every fundraiser, I don't just go to one fundraising event. Now I've cut back on every fundraising event. Now I've cut back on my donations to my charities. There's a function tonight, a fundraiser, I'm not going. It's a legal charity, it's not one of those organizations that has been shut down, but I'm not going.... I won't give, me myself. I want to give a check to help little kids with no

parents—we're talking about human beings here—but I can't.⁴⁷

She asked, "What happened to freedom of religion? We don't have freedom of religion because of religious inquiries? Muslims are going to widows, orphans, disabled children, other needy people, and we can't practice our religion."⁴⁸

An Indian-American donor similarly told the ACLU that he is unable to meet his minimum Zakat obligations because of fear of questioning by FBI:

I'm so scared to give charitably. They might come after me. I think when I'm giving, will they come after me? Will they put me on their hit list? There is a constant worry in the back of my mind. I am earning more now and I want to give more, but I don't want to be in the limelight, so I just give small amounts like \$500. I fear giving more would put me on the hit list, and the government will say there is a linkage between me and the charity.... Because everything is under scrutiny, I am not able to fulfill my religious obligation to give—because I am just afraid. There is a certain amount you have to give, a minimum percentage, but with this going on I can't give the minimum amounts.⁴⁹

He added that his inability to make the minimally required Zakat donations causes him to feel he is not being faithful to his religious beliefs:

It affects my religious obligation to give. I am not following my faith, I'm not practicing my religion as I should. I'm like a prisoner, I can't practice my religion the way I want to—there's no freedom in that respect. I'm not being honest to my faith, I'm being a hypocrite basically. Hypocrisy is so much worse than not believing something.⁵⁰

One Muslim woman, Salma H., who was a dedicated donor to Muslim charities until the closure of the three largest Muslim charities in the United States,

told the ACLU, "Our religion says you have to give the Zakat, for the needy... but it has been very hard in America for us to give. I wish there were freedom to give, but will be harassed by FBI, so I stay out of it. I don't want to be harassed, asked where I give my money, I don't want one day to be questioned."⁵¹

"It affects my religious obligation to give. I am not following my faith."

I'm not practicing my religion as I should. I'm like a prisoner, I can't practice my religion the way I want to—there's no freedom in that respect.⁵²

toned, "what did you do with your money, where did it go?" I fear because I see people who are so good in giving, and they get in trouble."⁵³ She added, "I have an envelope [from a Muslim charity] asking to donate and I hold it and I'm worried, should I do it, or shouldn't I do it? This is a fundraising envelope from LIFE [for Relief and Development], to rebuild Gaza. I used to always send money when I received these envelopes, but now I am worried, should I or shouldn't I?"⁵⁴ Salma H. says it affects her religious freedom: "It affects me. When I donate I accept from God I am doing my deeds, what I am supposed to do. I feel like I am not doing my religion right."⁵⁵

Several donors explained that their perception that the Muslim community is under surveillance and that their financial transactions are being monitored affects their charitable giving. One donor explained, "When you think someone is watching you constantly, you hesitate. I have heard that when you write a check, it is monitored.... I also heard that they watch the bank transactions, and if you give to a [Muslim charitable] organization you will give to a [Muslim charitable] organization you will give to a [Muslim charitable] organization.... Based on what I've seen in the media, the way they are monitoring, it's very outside the American way."⁵⁶ A Muslim religious

leader added, "Because of this scrutiny on Muslims' funds...we are hesitant to give Zakat. Because we felt we're being observed a lot, we fear someone will turn up on our doorstep asking where our charitable funds have gone."⁴⁴

iii. *Fear of Immigration Consequences of Donating*

Some donors feared immigration consequences, such as deportation, denial of citizenship, asylum, or removal, based on their immigration donations. The ACLU found that immigrants, especially those who are out of immigration status or those with pending immigration relief applications, are especially fearful of making charitable donations, and most donors in this category have completely ceased giving Zakat. According to an attorney who has provided legal advice to Muslim donors in Michigan, "There is a sense people have that they can be denied an immigration benefit because of their donations."⁴⁵ This fear is not unfounded, as non-citizens can be denied entry to the United States or deported for having provided material support to organizations that have never been designated as terrorist,⁴⁶ and thousands of asylum applicants have been denied asylum under material support provisions contained in immigration law.⁴⁷ The Department of Homeland Security interprets the expansive immigration law ban on material support to apply even to those who are coerced into providing support to blacklisted groups, and thus have barred from asylum protection individuals forced at gunpoint to give Colombian guerrillas food or a cup of water.⁴⁸

American Muslims' fear is compounded by serious delays in the processing of green card and citizenship applications. Since September 11, 2001, as a result of the September 11 attacks, the State Department, as well as the U.S. Citizenship and Immigration Services, has experienced significant delays in the green card and naturalization process. Many immigrants who have satisfied the requirements to become U.S.

citizens are left in limbo for months or years due to slow processing of a background check called the FBI name check, and the ACLU has filed five class action lawsuits challenging these delays.⁴⁹ Donors' fears about delays based on charitable giving may be well-founded. The specific cause of the delays in the FBI name check varies, but is primarily due to a drastic modification in 2003, which required applicants' names to be checked not only against the names of suspects and targets of investigation (so-called "main files"), but against "reference files," which include the names of anyone who might have come into contact with the FBI, including innocent witnesses, victims, and people who have applied for security clearances (such as for employment purposes).⁵⁰ If the FBI has investigated a Muslim charity and generated a list of donors or volunteers, those names may be contained in the database of names.

One Palestinian immigrant told us that he ceased giving Zakat while his application for a green card was pending. He said, "I have been in the United States for four years. For the first three years after coming I did not give any penny to charities or even to my mother, brothers, and sisters back home, because I was looking for permanent residence and citizenship, and I was scared my donations could affect this."⁵¹ A Lebanese immigrant similarly told the ACLU, "I was in the process of getting my citizenship three years since I applied; I am still awaiting security clearance. I worried that my citizenship would be denied because of my donations. I feared I would be the next to be arrested, so I decided I would be the last person giving until I get the citizenship."⁵² A British immigrant told the ACLU that he has suspended all charitable giving while his naturalization application is pending, for fear that he would be denied citizenship because of his Zakat donations:

I don't give money to any organization, especially until I know fully what is going to happen with my immigration case.... I stopped

giving about two years ago, ever since there was a delay in my immigration case.... I am really afraid to donate money to any Islamic organization because I feel I will be a victim of misjudgment by an immigration agency. I feel great fear."⁵³

A Palestinian who immigrated to the United States 20 years ago told the ACLU he fears he will be denied citizenship on account of his Zakat donations to legal charities, and has limited his charitable giving as a result. He explained, "I am particularly afraid of donating because I applied for citizenship two years ago.... I worry that the government will link me to my charitable giving, and will deny me citizenship because of my donations, even though they went to Muslim charities that had a good track record. I worry that my charitable giving will impact my citizenship application—maybe immigration knows that I gave to Muslim charities, and maybe that will affect the decision on my citizenship application."⁵⁴

Other donors expressed fear that immigration relief such as asylum could be revoked on account of their charitable donations. Stories of such immigration consequences circulate among some immigrant Muslim communities. For instance, one donor told the ACLU, "I am fearful that if I write a check to a charity, I will have problems. For instance, one guy with asylum who wrote a check to HLF lost his asylum benefit."⁵⁵

b. *Inability to Donate Zakat to Preferred Recipients in Accordance with Religious Beliefs*

Many Muslim donors reported that they have ceased making donations for overseas humanitarian relief or orphan sponsorship because of a preference to do so, and in some cases in contravention of their religious beliefs that their Zakat donations should be directed to needy Muslims overseas or for orphan sponsorship. In interviews with the ACLU, numerous Muslim donors stated that according to their religious beliefs and personal understanding of the categories of preferred or mandatory recipients of Zakat in Islam, they strongly preferred or felt obligated to give Zakat for overseas humanitarian relief, for needy individuals in their coun-

"I would prefer to send my Zakat to the needy overseas. Zakat specifically has to go to the most needy, wherever in the world. I feel it should be paid overseas, but given the fear factor I cannot send it there."

tries of origin, for refugees, or for orphans. Many American Muslims reported that because of Muslim closure, and in some cases prosecution, of Muslim charities that provided humanitarian assistance overseas or funded orphan sponsorship programs overseas, they felt that they could not fulfill their religious obligation to give Zakat to these preferred or mandatory beneficiaries of Zakat.

Numerous donors told the ACLU that because of fear of the consequences of donating, they make Zakat donations only to local charitable causes rather than for overseas relief. Some of these donors told us that their religious beliefs required them to give their Zakat for humanitarian aid or disaster relief for needy Muslims overseas. As one

donor explained, "You compare two societies, and you see that those overseas have greater need and live in harder times, so you should give your Zakat to them."⁴¹ A Muslim religious leader explained,

Because of this scrutiny on Muslims' funds, and the shutting down of HLF and other funds in the West, we are hesitant to send our funds abroad. There are more truly deserving recipients of Zakat overseas than over here. Here in the U.S. people who are needy may have things they don't truly need, so they may not be truly

deserving of Zakat—they may have luxuries like video games and televisions and computers.⁴² According to these donors, their religious belief is that Zakat should go to the neediest Muslims globally, which some said they understand to mean Muslims living in areas afflicted by humanitarian disasters (such as natural disasters or conflict) or Muslims (such as those who are being persecuted) to these beliefs, their Zakat should be directed to humanitarian aid in hotspots such as Iraq, Afghanistan, Somalia, Pakistan, Kashmir, Bosnia, Chechnya, southern Lebanon, and the Occupied



LIFE for Relief and Development, a Michigan-based American Muslim charity, provided medical relief to areas in Lebanon devastated by the 2006 Israel-Lebanon conflict. Some Muslims told the ACLU that while they prefer to make Zakat contributions to Muslim charities that provide humanitarian aid in Lebanon and elsewhere overseas, they no longer support their intention to support humanitarian aid. LIFE for Relief and Development

Palestinian Territories, but felt that donating to needy Muslims in these areas is not an option for them. These donors expressed fear that their donations to such populations may come under scrutiny or could run afoul of the law despite their intention to support humanitarian aid.

A former Department of Treasury official who served in the administration of George W. Bush expressed concern about the Treasury Department's actions. "We're probably getting a lot of thousands of people who are being misled from the [humanitarian] sector, who think it's a stressful time to give overseas so I'll give to my local mosque or at the local level instead. It's a shame that they feel constricted."⁴³

One doctor told the ACLU, "Most of us, including myself, are now giving only to local causes instead of overseas, because I fear the accusations at some point that the money went to supporters of terrorism under U.S. law."⁴⁴ He added, "When we are at Friday prayer, which is the main prayer for Muslims, every week it used to be that Muslim mosques would encourage people to donate to areas of need overseas, especially for humanitarian relief in Iraq, Afghanistan, Palestine, and Somalia. But now you hardly ever hear requests for donations to anyone, especially to these areas."⁴⁵ A Chinese-American Muslim explained to the ACLU that he was unable to contribute to relief aid after the May 2008 Sichuan earthquake, explaining, "People's conscious perspective is that it is dangerous to give overseas, because of the fear of being related to an organization that will come under the scrutiny of the government. My overseas donations have become very, very limited because of this. Before, I gave money to humanitarian relief in China. Even though the majority of the population in China is not an elderly people, there are a lot of elderly people there, so now to give to China is impossible as a Muslim."⁴⁶

One Lebanese-American Muslim told the ACLU that he used to make Zakat contributions to Muslim charities that provided humanitarian aid in

Lebanon, but no longer does so because of fear. He said, "I would prefer to send my Zakat to the needy overseas. Zakat specifically has to go to the most needy, wherever in the world.... I haven't sent my Zakat overseas since HLF closed. I am not satisfied with paying Zakat here [in the U.S.]. I feel it should

"Compensating an orphan with no parent is considered to promise us great rewards in the hereafter, because you have provided for that needy child and have changed their life. In Islam giving money to that cause is one of the most important things you can do."

be paid overseas, but given the fear factor I cannot send it there. There is this atmosphere of fear, and if it improves, then we can resume sending money overseas."⁴⁷

One Muslim woman who previously donated to Muslim charities that provide humanitarian assistance overseas told the ACLU that she has stopped doing so. She said, "Now I try to give here, I don't send anything overseas, because I don't want to get harassed and asked where I give my money, I get mail about donations for Gaza, and I get scared and say no. I would love to help, but I don't want to be in trouble. I don't have freedom to send money overseas, such as to Gaza, because I will be questioned."⁴⁸ She explained that according to her religious beliefs, refugees and schoolchildren overseas are preferable recipients of Zakat. "It would be better for me to send money to go overseas, for food and shelter. We Zakat, the most important thing is that the money goes to the people who need it, especially to refugees camps, where there is no food. I want my Zakat to buy school materials for needy children overseas, but I can't."⁴⁹ Another Muslim woman similarly explained,

orphans—are verboten. Many donors feared that if they sponsored a Muslim orphan, they could be targeted if it was later found or alleged that the child's relatives had committed a terrorist act.⁶¹ One Muslim who had previously sponsored an orphan through the ACLU for ten years until the ACLU told him to stop because of the fear of being targeted said that although he views orphan sponsorship as an obligation of his faith, sponsoring an orphan is no longer an option. He said,

Fulfilling Zakat is a major concern for me... [T]here are certain things it has to go to. Sponsoring an orphan is part of Zakat, but with everything going on now I have a hard time finding a place to put my Zakat money to an orphan or student sponsorship... Charity in general is a major part of Islam, but sponsoring an orphan in particular is a big deal in Islam. Part of that is because the Prophet Mohammed was an orphan himself. You'll see that in almost any Muslim country; one of the most common charity projects is an orphanage... Compensating an orphan with no parent is considered to promise us great rewards in the hereafter, because you have provided for that needy child and have changed their life... in Islam giving money to that cause is one of the most important things you can do.⁶²

He explained that he is scared off from orphan sponsorship because, "The thing that haunts me is what if one of those children they assist is related to someone who did something wrong? How can we investigate every child they sponsor to make sure the kid's not in a family of 100 percent of the kids didn't do anything wrong? It paralyzes my giving."⁶³

Before I would send money abroad to Pakistan and India. Now we cannot; otherwise there would be a red flag on my bank account. I am not able to fulfill Zakat the way I want. I want to send that money to the poor people overseas who need it most, to Pakistan or Africa. Here at least the government takes care of the poor by issuing government checks, but overseas, especially in alternative, so people will starve. I really feel thwarted because I can't provide help where it is needed.⁶⁴

Many Muslims told the ACLU that their understanding of Zakat is that the preferential category of recipients is the needy in their country of origin. These donors explained that in their understanding of Islam, Zakat preferably should go to the needy closest to them, which they interpret to mean those in their countries of origin. Many of these donors told us that they are unable to give Zakat in accordance with this religious belief, because of their perception that they could be targeted for donations to their countries of origin. One Pakistani-American Muslim woman told the ACLU, "With recipients of Zakat, it starts with the first circle, kin, the second circle, distant relatives and others in your homeland; then beyond. You are supposed to take care of the poor people among your relatives and the needy people closest to you. But I can't."⁶⁵ One Palestinian-American Muslim told the ACLU, "We say in Islam you help the needy people close to you that you know, and go from there. We have a saying in Arabic, words from the Quran, that you help those closest to you. Of course I would prefer to give to the charity that they takes money to help the needy people in the Muslim organization in the United States) now that can make it possible to give to Palestinians [without fear of government retribution]."⁶⁶

A number of American Muslims reported that their ability to freely and fully exercise their religion is limited because of their perception that orphan sponsorship programs—especially for Muslim

c. Non-Muslim Charities Not an Adequate Option

The government hasn't said you can't give Zakat—Zakat isn't outlawed—but the inference is that you can't give to a Muslim charity. People have tried to find an accepted charity to give to, but if it is a Muslim charity there is a cast on it.

—Muhammad H. Dabbas, Texas⁶⁷

There are Christian charities and Jewish charities, but why not Muslim charities? Christian and Jewish charities are legit, they're religious. Being Muslim, I want to fulfill my religious Zakat, which is our charity as Muslims. It has to go through certain channels. I am not an Islamic scholar, so I don't know who Zakat is to be distributed to and how it is to be handled. I must rely on Muslim charities for that. As far as where my Zakat is going, I have to give Zakat to those who know the rules of how to distribute the money. Being a good Muslim requires this.

—Abdullah J. Allen, Texas⁶⁸

American Muslim donors interviewed by the ACLU nearly unanimously agreed that they could not fulfill their obligation to give Zakat by making donations to secular charities or charities of other faiths. Though there is not unanimity in this belief, many donors reported that they believe that Zakat must be given to other Muslims, and accordingly believed Muslim charities were the only means of ensuring their Zakat was distributed among needy Muslims. Others reported that their obligation to give Zakat would not be fulfilled if it was not distributed in accordance with the rules prescribed in Islam regarding the permissible recipients of Zakat. For these donors, only Muslim charities or mosques are capable of distributing Zakat in accordance with their religious beliefs.

According to Laila al-Marayati, former presidential appointee to the U.S. Commission on International

Religious Freedom and a former member of the State Department's Advisory Committee on Religious Freedom Abroad who serves on the board of directors of a Muslim charity.

People ask why can't Muslims give to just any group? But there are certain requirements in Zakat, and by giving to certain organizations that have experience with this you are fulfilling your obligation in the way you are required. For example, money given during Ramadan has to be spent only on a project, not on overhead. People look for that reassurance, and they ask [Muslim charities] about this. You can't ask CARE, Caritas, or Save the Children about this. This is the other piece of the religious freedom aspect: Muslims need to be sure that they are giving to an organization that knows what is involved [in distributing Zakat]. Giving to a Muslim group isn't just about giving to a Muslim recipient, but giving to an organization that understands the religious rules.... People need a group that they can trust Islam with—not just any organization can gain that trust.⁶⁹

Religious scholars repeatedly told the ACLU that in their understanding of Islam, a Muslim could not discharge her Zakat obligation by donating to a secular charity or a non-Muslim faith-based charity. According to one imam, a non-Muslim charity would not understand that the Quran specifies approximately eight specific categories of recipients for Zakat. The imam explained, "A group that is not Muslim would understand what Zakat is, but they wouldn't understand the lower-level details like who should give Zakat. So I can't give my Zakat, my 2.5 percent, to non-Muslim groups."⁷⁰ According to another imam,

Christian or secular charities will not work for Muslims. For us, Zakat is a part of our religious tradition, and it must not be treated the same way as Christian charity. Collection and administration of Zakat must be in the hands of Muslims. The beauty of religious freedom in

This country is we do not force the articles of one faith onto another faith. It is unacceptable for Muslim charity to be administered by those who are not Muslim. Secular charity is charity, but ours is faith-based. It is part of our belief system and very strongly connected to a strong pillar of Islam. Our mandatory charity cannot be treated as secular giving. It would be disre-

"Giving to a Muslim group isn't just about giving to a Muslim recipient, but understanding the religious rules. People need a group that they can trust Islam with—not just any organization can gain that trust."

specting our religion to have the government or a secular organization administer Zakat. Because this is part of our faith, because Allah orders the giving of Zakat, the administrator of Zakat must understand that Islam has specific characteristics, and that there are specific categories of recipients of Zakat.⁴⁴

Donors also told the ACLU that according to their religious beliefs, they could not donate Zakat to a non-Muslim charity. One donor explained, "Zakat has a very strict rule surrounding who receives it: very poor destitute Muslims, travelers, people who can't give Zakat... You can give a secular charity (Sadegeh Islamic Center), but not Zakat. (Sadegeh Islamic Center) is not a Muslim charity." Another Muslim said proper distribution of Zakat is necessary to fulfill his religious obligation to give Zakat.

The obligatory charity, Zakat, has to be handled by those who know exactly the proper rules for distributing Zakat. Zakat is obligatory, and has to be given to about eight categories of preferred recipients for Zakat. There are proper ways in which Zakat is given out, and these eight categories are property categories. If the proper organization administering Zakat has the proper understanding of how that charity is extremely important. It is vital to distribute Zakat properly to please God and to attain religious fulfillment.⁴⁵

Some donors also expressed concern that a non-Muslim, faith-based charity would potentially use their donations to promote a faith other than Islam, in contravention of their religious beliefs. One donor said, "If I believe in Islam and believe it is the true religion, then it would be hypocritical and contradictory of me to give a big chunk of my money to promote Christianity, Hinduism, or Judaism—for example, to give money to a Christian charity that goes to Sudan to convert people to Christianity."⁴⁷ An Imam explained, "We can't give charity to someone who is promoting another religion, so we wouldn't give to a church."⁴⁸

d. Religious Rights Violations Due to Charities' Sequestering of Zakat's Funds

The millions of dollars that were confiscated from all the charities, I think that every penny of that money must go to all the needy families the donors intended it to go to. It is the right of the giver to give this Zakat to its intended recipient, and it is the right of the recipient to receive that donation. It is a religious donation, not a business transaction. According to our faith, it is a religious giving that must be respected.

—Nabil Saleeb, Richardson, Texas⁴⁶

The federal government continues to sequester charities' frozen funds and on the basis of all publicly available information, the Department of Treasury has repeatedly requested to transfer frozen charitable assets to the Department of Treasury's 2007 Terrorist Assets Report, which the Treasury Department has not updated, reports that the seized assets of international terrorist organizations, a category that includes U.S.-based charities whose assets were seized pursuant to an OFAC blocking order, totals over \$20 million (\$20,736,920).⁴⁶ Some of these frozen charitable funds have been held in U.S. government bank accounts for over seven years. The laws that authorize the freezing of assets do not set any timeline or limit for the discharge of these funds, such that the frozen charitable funds could be held indefinitely. The Department of Treasury has denied repeated requests to allow transfer of blocked funds for humanitarian or disaster relief in accordance with the intent of the originators of these funds, charitable donors, even though the Department of Treasury has authority to allow transfer of frozen funds.⁴⁹

While the different schools of Islam do not have clear rules on whether the religious obligation of giving Zakat has been satisfied if the donor gives the money to charity but the funds are subsequently seized before distribution to the intended recipients, several Islamic scholars and religious leaders explained to the ACLU that in their view, the obligation to give Zakat is fulfilled if the donor's intent to give Zakat is not frustrated. According to one Imam, "When a charity's assets are frozen, a lot of people feel their Zakat has been unfulfilled, unaccepted by God, and therefore they have to give more money to fulfill their obligation."⁴⁶ The Imam further explained that in his understanding of Islam, "From a technical point of view, Zakat is unfulfilled if it does not reach its rightful owners. The rightful owners of wealth are the needy and poor, not the Treasury Department or the U.S. government banks. Zakat, as mentioned in the Qur'an, is not fulfilled if it does not reach the rightful owners. There is a consensus of scholars of Islam that if the money does not reach a needy person then Zakat is not fulfilled."⁴⁵

Another Imam told the ACLU, "About recipients of Zakat, it is a very strong general rule in Islamic law, which is connected to belief, that the intent of the donor must be stuck to. The intent of the donor is law. Because it is belief and faith and intention in the heart, so the act of giving Zakat must be bound to the intention of the donor.... This rule is very strong in Islam. If the intended recipient of Zakat dies, we have to go back to the donor to ask for permission to give to someone else even if that other person is in the same circumstances. We are bound religiously to get permission. The rule is you must observe the intention of the donor, otherwise religiously we believe to be a sinner if it does not go to its intended recipients. It is a big sin from our theological perspective. Zakat cannot be held back from needy people, because it must reach needy people as soon as possible—so it must not be stored somewhere and not given to the needy people who were intended to receive it."⁴⁷

For some Muslims interviewed by the ACLU, the government's seizure of Zakat that they gave in good faith has prevented them from fulfilling their obligation and thus infringed on their free and full exercise of their religion. The ACLU interviewed a donor to HLF just before its funds were seized. Some of these donors told the ACLU that the freezing and holding of their Zakat money prevented them from fulfilling their religious obligation to give Zakat. One donor said, "If the money doesn't reach there, it left you but it didn't cleanse you, it didn't cleanse your soul. It doesn't do any good if it didn't create a benefit for someone in need, if it's held in a government bank. My religious right was definitely violated by the government when it held my Zakat."⁴⁸ Another donor told the ACLU, "I gave to HLF. There is religious consequence for me, because I gave and that money is held by the U.S. government.... I have the small sorrow in my heart that that person should have received that Zakat money and could have eaten one more meal."⁴⁹

Of the government's continued holding of the frozen charitable funds, one Texan donor said, "Religiously, it is the worst thing that can happen."⁵⁰ He added, "The government has put their hands on millions of Zakat dollars given by citizens to give to orphans and the needy. Why should we pay Zakat when we don't know if our religious duty is fulfilled or has been taken by the government? Me, personally, I donated to HLF in the last day or two before HLF closed.... Religiously, money dispersed, especially when it is Zakat, when you put it to a certain way, it should go to the exact intention that it was given for. It should go according to your will, the donor's intent. If you give money for orphans in Palestine, it is unacceptable even for it to go to an orphan in Iraq."⁵¹

A donor in Michigan told the ACLU, "My money to HLF was frozen. Big-time.... My religious rights have been violated because the Zakat we donate is something we are obligated to give, and we cannot

just give it anywhere. We have to give it to Islamic centers, orphans, for the needy such as the homeless, and to support civil rights and empowerment of the community, donated to HLF for orphans and needy families overseas, and that money was frozen. Millions of dollars go through. The money is obligated to go to them, it is in a government bank and it didn't go to them. It is in a government bank."⁵² The donor expressed concern that he is unsure how to fully discharge his religious obligation to give Zakat in light of the continued hold-

"If the money doesn't reach there, it left you but it didn't cleanse you, it didn't cleanse your soul. It doesn't do any good if it didn't create a benefit for someone in need, if it's held in a government bank. My religious right was definitely violated by the government when it held my Zakat."

ing of his Zakat funds. He said, "We ask the Imam and other religious scholars, what should we do to meet our religious obligation? Do we give again, through a different organization? We have questions about this."⁵³

Moreover, some donors pointed out that the sequestration of their Zakat funds violates not only their religious right to give Zakat, but also the religious rights and responsibilities of those obliged to receive Zakat. According to Islamic religious texts, it is the right of the needy recipients to donate Zakat. The needy have religious rights to receive Zakat from the resources of the rich whether government or individuals.⁵⁴ Another donor said, "In Islam it isn't only an obligation to give, but for the needy it is their right to receive that money."⁵⁵

Not only has the Treasury Department denied specific licenses requested by designated charities for transfer of frozen charitable funds to humanitarian relief, but in 2004 and 2007, the U.S. government filed criminal forfeiture actions against U.S.-based Muslim charities Holy Land Foundation for Relief and Development, Islamic Relief USA, and Relief Agency USA (IARA), respectively.⁵⁶ IARA seeks the release of the funds for humanitarian aid, told the ACLU. "Donors have expressed an intent to help the impoverished, such as to support IARA's meal-a-day program in Zaire. Over a million dollars of donors' religious money that was donated has been seized, and orphans have been left without donations. The forfeiture action further frustrates the donors' intent."⁵⁷

An Imam in Michigan told the ACLU, "I feel that the atmosphere of fear has affected the religious freedom of some people. Some people think even going to Friday prayer or another religious ritual at the mosque can get them in trouble. They don't feel comfortable participating. That is very unfortunate—people conclude there is a level of risk, if they were to exercise their religious freedom."⁵⁴ A Muslim donor in Texas, Rabaa Saleh, told the ACLU of the effect on Muslims in Texas,

What they are affecting is the institutions through which I participate in my religion. How do I explain to my son that unlike a church that has a picnic in the park, we are unable to participate in such events? Because participating in events creates a headache for us, we decide why don't we just stop having these events? We want to participate because this is part of our religion, but we are being discouraged to the degree of my participation in religious institutions. We don't want to sacrifice who we are and what makes us Muslims.⁵⁵

Texas Muslim Salmaan O. told the ACLU, "The number of volunteers at the masjid [mosque], the people who associate with the masjid, who donate regularly [to the mosque], they have gone down. People want to keep their Shari'ah. When the mosque is closed, it's like we're being separated. People who are not Muslims, they're being separated, including NAAT [North American Islamic Trust] and ISNA [Islamic Society of North America], it really created fear, because these are mainstream organizations, umbrella organizations. People view these as mainstream, liberal groups, and they see these being targeted."⁵⁶ Hadri Y. similarly said, "Since the government harassment started, membership to the masjid [mosque] has gone down about 20 percent, because of the retaliation against Muslims. We have Islamic schools that can hardly find board members to run it; any Muslim community group, it's the same. We see people running away. People are shying away from leadership."⁵⁷

IX.
Chilling Effect
on Association with
Muslim Community and
Religious Organizations

4. Limitations on Freedom of Association Due to Climate of Fear

Mosques not only serve as prayer spaces, but as hubs for various facets of religious and cultural life. Mosques also serve as religious schools, charity distribution centers, Arabic language schools, and youth centers. The climate of fear created by the joint efforts of the federal government, Muslim donors and other Muslims, and criminal prosecution of some Muslim charity leaders for material support, is limiting American Muslims' freedom to associate with Muslim religious and community organizations, including mosques, Islamic schools, Arab and Muslim advocacy organizations, and Muslim charities.

Many American Muslims reported to the ACLU that the climate of fear created in part by the government's policies regarding Muslim charities and charitable giving affects their participation in a wide range of religious activities. In Michigan and Texas, Muslim community leaders and members described to the ACLU the consequent chilling effect on Muslims' participation in religious activities such as congregational prayer at the mosque every Friday, or the observance of religious rituals such as Ramadan or other communal religious rituals. This chilling effect implicates both freedom of religion and association, in contravention of constitutional and human rights protections.

"How do I explain to my son that unlike a church that has a picnic in the park, we are unable to participate in such events? Because participating in events creates a headache for us, we decide why don't we just stop having these events? We want to participate because this is part of our religion, but what is being affected is the degree of my participation in my religious institutions."

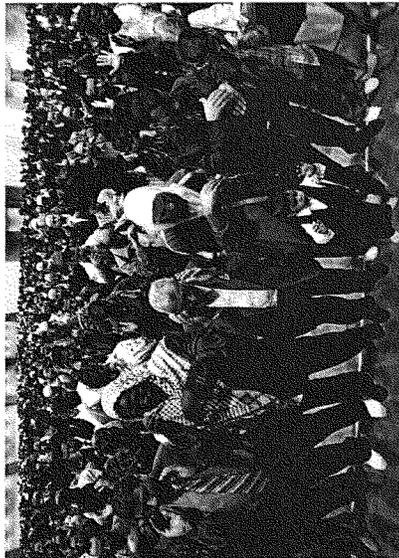
According to Koneish A.,

The impact is not only on the individual level, but also on the social level. There are people who stopped coming to the mosque because of fear that the government is tagging the cars of people going to the mosque, and Muslims in Africa are not showing up at the mosque, are not going to the mosque, we cannot have religious conversations over the phone or in the mosque because we fear someone is listening and will misunderstand what we say. There are people who are fearful and therefore won't be on the board of the mosque. I personally know people who are on the board of the mosque and

will not have their name officially on the board because they are fearful that the government will close down the mosque and then the government will come after them.⁴⁴

One Muslim woman described his fear of criminal prosecution if he continued in the activities he participated in at his mosque prior to the closure of HLF:

Especially during the few years after HLF closed, I didn't want to do anything for the community, I wanted to stay home. After HLF closed I didn't do as many activities as I used to for the mosque. We used to do activities at the mosque for the youth—we would take them



Worshippers pray during the Eid celebration at the conclusion of Ramadan. About 3,000 Muslims attended the congregational service. (Thomas Butler/Memphis Commercial Appeal)

on a monthly picnic for youth or small families, or have a meeting. These activities are scaled back after the closure, and these activities haven't resumed fully. I also used to lead Boy Scouts with the mosque, but I stopped for a while, mainly because of intimidation and fear that the government might suspect we are doing something bad. That, some [Muslim] brothers went to jail and I don't want to go to jail.⁴⁵

The ACLU also found that there is a common perception among many members of the Muslim communities in Michigan and Texas that these active with Muslim community and religious organizations will be targeted for interviews with law enforcement or for criminal charges on account of their constitutionally protected association with legitimate Muslim community and religious organizations. Our research reveals that this perception of the price of association with Muslim community and religious organizations affects Muslims' participation in Muslim community organizations.

A Muslim community leader in Texas told the ACLU, "A vital freedom is the freedom to be active in issues for the community. Now there is a high price for being active, whether active in charities, active in mosques, or active in [Islamic] schools, or other Islamic organizations... This atmosphere discourages Muslims from being active, because being active can cause you to be put in jail."⁴⁶ He continued, "The price of religious activism has paid a toll on those active in the religious community: people have been indicted; their businesses suffered; their wives have been deported; their children have been taken away; their families are being harassed by the IRS, and interviews by the FBI."⁴⁷

According to one Muslim woman, Melissa R., "My husband has turned down several offers to be on the boards of our mosque." He also declined to be on the board of our mosque," she continued, "We are very community-oriented people, and we

want our children to take leadership roles as they become adults, but we have to tell them your own self-preservation is more important than being involved in the community because you don't know what the government will do next. I think the Muslim community organizations are benign, but I will not choose to work with them because of the fear or guilt by association—it's too risky."⁴⁸

One Muslim involved with a Palestinian human rights advocacy organization in Michigan said,

"How do I explain to my son that unlike a church that has a picnic in the park, we are unable to participate in such events? Because participating in events creates a headache for us, we decide why don't we just stop having these events? We want to participate because this is part of our religion, but what is being affected is the degree of my participation in my religious institutions."

"People are shying away from joining us and supporting us, because of the government's grip on Muslim charities and the Muslim community. A number of people are no longer coming to our events, fearing that they will be persecuted for the organizations they associate with and what they say. It is at the point where we feel the government can prosecute us not just for terrorism but also for association and speech," he said. "People tell us not to support us, but they come to our events, but they fear to support us because they don't want to express any support for Palestine. The Holy Land Foundation case was a big cause of this—that legal battle was followed very closely here [in Michigan]."⁴⁹

go to a masjid (mosque) but I am afraid to put my name down with any group. I even thought a hundred times before giving my name [to the ACLU].¹⁴

The ACLU also documented a common fear of appearing in public with those who have been indicted or are perceived to be under investigation because of fear of guilt by association. Several American Muslims cited the high-profile criminal prosecutions of Muslim charity leaders and employees for material support, and their perception that the government has successfully imposed guilt by association on these community members, as a reason for this fear. One Muslim woman who worshipped at the same mosque as several of the HLF defendants told the ACLU, "The fear has really affected how my family reaches out to certain people in our community—you don't want to be seen with certain individuals. I have a fear of being investigated, of being associated with people who have [legal] claims against them. With the government it is a guilt you can't deny, the guilt by association—it's a web you can't get out of, it's endless. We're more cautious about attending certain fundraising dinners because of the fear of taking photos [with people] or taking down names."¹⁵ She added,

We don't have as much outward participation in our religion as we used to. After the closing of HLF, we didn't know that if praying in congregation meant the government was taking photos of our rakes together, and we decided we don't have to pray at the mosque, because of the government's intimidation. If we pray in congregation, we're perceived as being connected to that case. You have to pray with? More people like us are choosing to pray at home instead of getting out and praying in the congregation. There is a lot of suspicion and fear. We have moved away from being in the mosque as much.¹⁶



A Muslim woman prays with other congregants during a weekly Jumu'ah prayer service at the Masjid al-Munirah in Washington, D.C. The mosque is a congregational worship for Jumu'ah prayers held every Friday. (A.J. Walsh/Reemphas Commercial Appeal)

Another Muslim told the ACLU that the atmosphere of fear has limited his ability to get involved in local and national advocacy efforts regarding the closure of Muslim charities. Like many others interviewed for this report he preferred not to be identified:

The climate of fear has affected my association, absolutely. I think twice—for example, I want to go meet with the Muslim Legal Fund of America guy to see what I can do about the closure of Muslim charities, but I am afraid to go to his office to meet with him. I am afraid the FBI will follow me after that meeting. I will

In addition, the ACLU interviewed some who expressed a fear of associating with Muslim charities, such as by participating in Muslim charities' boards of directors. According to Laila al-Marayati, president of the board of directors of AmeerUSA, a Texas-based Muslim charity, "in terms of taking on the role of a board member, it is hard to recruit people to be on the board. People are reluctant to be on any list to be associated with board. When we approached people about being board members, one person said yes, but only if you stop calling yourself a Muslim organization. And that was a Muslim. It is a rational argument, but it is rooted in that fear of being associated with a Muslim organization."¹⁷ An employee of another Muslim charity told the ACLU, "Even charities have a hard time finding board members and volunteers. This is the case with our charity."¹⁸

their trust in federal and local government, including law enforcement authorities. One Muslim community leader in Texas told the ACLU, "A fissure has opened up between the government and our community, and this wound is not healing."¹⁷ The 9/11 Commission staff found that terrorism financing policies "can undermine support in the very communities where the government needs it most," and "risks a substantial backlash."¹⁸

Terrorism financing policies also undermine U.S. reputation abroad, especially in Muslim countries that are crucial allies in the "war on terrorism financing." In fact, Treasury Department-led terrorism financing efforts could undermine diplomatic efforts in Muslim countries, just as President Barack Obama reaches out to the Muslim world. U.S. terrorism financing policies give the impression that the fight against terrorism "financing is a war on Islam," directly contradicting President Obama's recent announcement before the United Arab Emirates that the U.S. has "no religious or ethnic prejudice" for the Islamic faith, and making clear that "America's relationship with the Muslim community, the Muslim world, cannot, and will not, just be based upon opposition to terrorism."¹⁹

Ibrahim Warda, an expert on Islamic banking and finance, Middle Eastern politics, and international political economy, told the ACLU of the crackdown on terrorism financing in the Middle East: "The countries productive to the effort of winning hearts and minds of Muslims, in that there has been a big outreach effort in many respects and when this specific aspect of equating Islamic charities with terrorist financing becomes known, this in and of itself creates a lot of suspicion."²⁰ He added,

It makes it difficult to justify that, in the words of President Obama, the U.S. is not at war with Islam—given the attack on Muslim charities... Obama's relationship to the Muslim world is respect and Obama is good at using it, but when we see the smearing of Muslim charities, it complicates

X. Collateral Consequences Undermine Counterterrorism Efforts

With the closing of charities it is causing people to put money under the rug—the government is driving charitable money underground. It is better for everyone to bring everything out in the open, to allow Muslims to integrate rather than harassing and alienating them.

—Nadry V. Irving, Texas²¹

The ACLU's research documented several collateral consequences of U.S. terrorism financing policies and practices towards U.S.-based Muslim charities and Muslim donors that actually undermine counterterrorism efforts. The ACLU's research showed that these policies and practices are alienating Muslim Americans, are damaging U.S. reputation and diplomatic efforts in Muslim countries by giving the appearance of a war on Islam rather than on unlawful terror financing, are undermining fear that drives Muslim Americans to donate to charities, and are creating a chilling effect on overseas humanitarian relief efforts. Each of these collateral consequences is counterproductive to the U.S. government's counterterrorism efforts.

The ACLU found that instead of working with American Muslim donors and Muslim communities as valuable allies in the fight against terrorism financing, the U.S. government's terrorism financing policies have alienated and intimidated Muslim Americans and engendered mistrust of law enforcement.²² Many American Muslims told us that the government's closure of Muslim charities and intimidation of Muslim donors has undermined

"One word we hear a lot in terms of the U.S. relationship to the Muslim world is respect and Obama is good at using it, but when we see the smearing of Muslim charities, it complicates things if the U.S. government is trying to project a policy of respect. Many big diplomatic initiatives of the Obama administration, especially in the Islamic world, could be derailed by these policies."

their good works could be most effective in supporting sustainable community development and civil infrastructures, countering extremism, and enhancing peace and security.

a. Alienation of Muslim Americans

The ACLU's research showed that the federal government's actions towards Muslim charities and donors have alienated Muslim Americans and created mistrust of law enforcement. Similarly, the Illinois Advisory Committee to the U.S. Commission on Civil Rights found that Arab-Americans and Muslim Americans were far more concerned by the closure of Muslim charities, the use of secret evidence, and the government's national interview program of Arab and Muslim men, than by hate crimes.³⁴ The ACLU's own research found that American Muslims identified the government's actions against Muslim donors and Muslim charities as a primary reason for their sense of alienation and mistrust of law enforcement and the federal government. According to one community activist in Texas, "A fissure has opened up between the government and our community, and this wound is not healing."³⁵

A Chinese-American Muslim told the ACLU, "Day by day I lose trust and faith in the U.S. government doing what's right. We never saw any major proof of allegations leveled against charitable organizations or individuals involved with those charities. You start to lose confidence in the government because whatever allegations it presents can't withstand the test of the courts."³⁶ An African-American Muslim similarly said, "The government lost a lot of trust, especially after seeing how they handled things in the courtroom [in the HLP case]. I don't really think they were fair. They're not just the FBI, they're the whole thing. I wonder how break fast during Ramadan with you. I wonder how the relationship is supposed to be after this."³⁷ The

president of a Detroit mosque told the ACLU, "We want to help in building the U.S.A., and we want to work with the Department of Homeland Security as trusted partners, but we feel they treat us as spies, not as partners. Bridges are not being built, no—they are being torn down."³⁸

A 9/11 Commission staff report on terrorism financing cautioned that the crackdown on Muslim charities under terrorism financing laws "can undermine support in the very communities where the government needs it most," and "risks a substantial backlash."³⁹ In its analysis of OFAC's designation of Benevolence International Foundation (BIF) and Global Relief Foundation (GRF), the 9/11 Commission staff concluded, "Although the OFAC action shut down BIF and GRF, that victory came at considerable cost of negative public opinion in the Muslim and Arab communities, who contend that the government's destruction of these charities reflects bias and injustice with no measurable gain to national security."⁴⁰

A former Department of Treasury official who observed during George W. Bush's administration that the Treasury Department's actions have alienated American Muslims. He told the ACLU, "I think that it has certainly created a sense of alienation among Muslims. I don't think there's any doubt about it. The Muslim community continues to allege that this is Islamophobia on the part of the U.S. government and it has treated the U.S. Muslim community unfairly and made it harder for Muslims to donate."⁴¹ He added, "It causes endless public relations issues that cannot be rectified with a simple statement. The continued policies of the U.S. government towards Muslim charities and donors to the prejudice of American Muslims that they are being persecuted."⁴²

Some experts have suggested that alienation of American Muslims may hamper Treasury Department and law enforcement efforts to combat terrorism financing. Terrorism financing policy expert

Abraham Warde told the ACLU that the U.S. government's actions against U.S.-based Muslim charities "created fit with respect to the Islamic community, and the chilling effect on Zakat donations in many respects harms the outreach effort and the effort to have genuine cooperation of Muslims."

"We want to help in building the U.S.A., and we want to work with the Department of Homeland Security as trusted partners, but we feel they treat us as spies, not as partners. Bridges are not being built, no—they are being torn down."

limits on the issue of terrorism financing and the war on terror.⁴³ He added, "There can be extremists, but that is not the way to get at them, to antagonize the entire community through broad-brush policies. Instead, the U.S. government must buy the support and allegiance of the potential support system, in this case the Muslim community in the U.S., by getting their good-faith cooperation by demonstrating that the government is treating them fairly."⁴⁴ Warde also noted, "The government has everything to gain by having the vast majority of Muslims dealing with the government on the basis of full trust and cooperation, but this becomes very difficult when there is a mainstream being among Muslims that they are under attack by the government. For the government to identify who are the extremists, it is important for the government to have a good relationship with Muslims and mosques, but because of the attack on Muslim charities it is difficult to achieve this."⁴⁵

b. Undermining U.S. Reputation and Diplomatic Efforts in Muslim Countries

...I want to be clear that America's relationship with the Muslim community, the Muslim world, cannot, and will not, just be based upon opposition to terrorism... We will convey our deep appreciation for the Islamic faith, which has done so much over the centuries to shape the world—including in my own country. The United States has been enriched by Muslim Americans.

—President Barack Obama, April 6, 2009²⁴³

Reports suggest that there are high diplomatic costs for federal government actions against U.S.-based Muslim organizations. Treasury Department closures of Muslim organizations undermine international relations with the United States on terrorism financing issues. Deputy President Barack Obama's diplomatic efforts in Muslim countries, and tarnish U.S. reputation in the Muslim world.

While a Treasury Department report notes that, "International alliances against terrorism are crucial because the overwhelming majority of terrorists assets, cash flow, and evidence lies outside our borders,"²⁴⁴ evidence suggests that in some cases the Treasury Department's actions have threatened vital international alliances to stem terrorism financing. The Department of State generally pressures other countries to freeze the assets of organizations designated by the Treasury Department. This backfired in the cases of U.K.-based Muslim charity Interpal and Somali remittance agency Al-Barakaat. In these cases, government or court review in the United Kingdom, Canada, Luxembourg, and Sweden found a lack of evidence to support U.S. actions. According to terrorism financing policy experts, both cases exhausted international goodwill and hampered further international cooperation on terrorism financing issues.

According to Ibrahim Warde, an expert on Islamic banking and finance, Middle Eastern politics, and international political economy, the Al-Barakaat case "proved that the U.S. was often playing fast and loose with facts and evidence."²⁴⁵ Warde found that the case "generated great cynicism towards the process of terrorist designation and asset seizure,"²⁴⁶ he told the ACLU. This was when many Muslims began to associate the U.S. with terrorism because the U.S. had said it had been supporting terrorism, but all the secret evidence the U.S. had was press clippings. That was when many became suspicious that the U.S. didn't actually have evidence despite claims it had secret evidence it couldn't disclose. At that time it became more complicated to convince the UN to include groups on the terrorism financing blacklist as well.²⁴⁷

Furthermore, Treasury Department closures of Muslim charities may undermine President Barack Obama's diplomatic efforts in Muslim countries. Warde told the ACLU, "It is certainly counterproductive to the effort of winning the hearts and minds of Muslims, in that there has been a big outreach effort in many respects and when this specific aspect of equating Islamic charities with terrorist financing becomes known, this in and of itself creates a lot of suspicion."²⁴⁸ He added, "It makes it difficult to justify that, in the words of President Obama, the U.S. is not at war with Islam—given the attack on Muslim charities.... One word we hear a lot in terms of the U.S. relationship to the Muslim world is respect and Obama is good at using it, but when we see the smearing of Muslim charities, it complicates things if the U.S. government is trying to project a policy of respect.... Many big diplomatic initiatives of the Obama administration, especially in the Islamic world, could be derailed by these policies."²⁴⁹

According to Shereef Aweel, an attorney for Michigan-based Muslim charity Life for Relief and Development (LIFE), "LIFE is now the largest Muslim charity in America. If LIFE is closed down and it is announced on Al Jazeera, that will undermine

Obama's agenda to mend fences. If we target the largest Muslim charity and shut it down based on a scintilla of evidence, based only on conduct in the 1980s (far-removed from terrorism—just nothing—the effect could damage our [national] interests further."²⁵⁰ According to the Executive Director of the Michigan office of the Council on American Islamic Relations (CAIR), "CAIR is the most recognized U.S. Muslim organization in the Muslim world—when CAIR executive directors travel in the

"This was when many countries stopped cooperating with the U.S., because the U.S. had said it had evidence of supporting terrorism, but all the 'secret' evidence the U.S. had was press clippings."

Muslim world people know who we are. The relationship between this government and the American Muslim community has a direct relationship to the perception in the Muslim world of the U.S. government, especially among intellectuals.... Smearing CAIR as an undicted co-conspirator sabotages the new president's outreach with the Muslim world."²⁵¹

Many interviewees told the ACLU they had personally observed that the targeting of American Muslim charities and donors tarnishes U.S. reputation in Muslim countries. Islamic banking and finance expert Ibrahim Warde noted,

[T]he policies on Muslim charities have an impact on reputation abroad. If you look at the Muslim countries, the closures of Muslim charities playing a big way in the media. So the issue of winning hearts and minds, whenever there are unwaranted attacks on Muslim charities, it does

prosecutions portray the wrong image to the people who depend on this goodwill... In testimony before the Senate Judiciary Committee, executive director of the Muslim Public Affairs Council (MPAC) Salam al-Marayati similarly said, "In an ideal setting, American Muslim charities serve a national security interest by promoting a positive image of America throughout the Muslim world. Unfortunately, the view that American Muslims are a harassed or persecuted religious minority is gaining ground overseas partially because of the blockage of the Muslim charities."⁵¹

c. Proportionate Rise in Cash Donations

Zakat is in hiding now.

—Salma H. Darbarni, Heights, Michigan⁵²

The ACLU documented a significant rise in cash donations by Muslim donors. Because of fear of the consequences of donating to legal Muslim charities, many Muslims whose charitable giving has not been completely chilled said they now make donations exclusively in cash to mosques or their family members, in order to preserve their anonymity and protect themselves from reprisal. In numerous cases, the ACLU observed that the climate of fear has prompted some Muslim donors to make common changes to their charitable giving. To avoid the attention of law enforcement authorities, many donors are giving in cash rather than by check or credit card, or giving anonymously rather than in name, reducing individual donations rather than giving in larger amounts, dividing charitable donations among numerous organizations rather than a select few, or writing checks to their mosque instead of their family members or charities. Some have set up their own charities to avoid having to pay Zakat through a Muslim charity. Many reported that to avoid allegations of guilt by association with a Muslim charity, they simply carry cash abroad themselves or give money to

friends or family traveling overseas, to distribute among family members and other needy people in their countries of origin.

Many donors told the ACLU that because of fear of government reprisal for their donations to legitimate U.S.-based charities, they now make charitable donations in cash, a change from their previous practice of giving via check or credit card. For example, one donor said, "I prefer to give money rather than check or credit card."

• "Sometimes I put cash in an envelope anonymously at the mosque, so I can fulfill Zakat. I wish I could just write a check or withdraw money each month in the wide open."⁵³

• "I am scared to put my name on anything. Instead, I give cash at the mosque, because I don't want to be harassed by the government.... Zakat is in hiding now."⁵⁴

• "We pay in cash instead because we don't know what will come later, even though our intention is to donate to help people around the world. Most of the time, we give cash because we don't want to put ourselves at risk.... It is a scary time to put your name on an organization's donor list."⁵⁵

• "We give cash more readily than a tax-identified donation, to have that cover of anonymity, to not have so much exposure to inquiries by the government."⁵⁶

• "The basic change is that I prefer giving cash nowadays. Before, I gave by credit card or check. Now, I'm giving to the mosques—just a basic identification lot of cash—rather than to give cash. This is something that has changed."⁵⁷

• "In the [charitable] fundraising that I have done I have seen more cash coming in. It also

has affected me personally, the amount and how I send the money. Nowadays, besides our required donation to the masjid [mosque], the only way I can give Zakat is to send cash in small amounts with friends or families traveling home—only \$400, \$500. I used to send Zakat through a monthly deduction out of my credit card account, but now I give cash."⁵⁸

"Sometimes I put cash in an envelope anonymously at the mosque, so I can fulfill Zakat. I wish I could just write a check or withdraw money each month in the wide open."

Mosque leaders confirmed that Muslim donors are increasingly making their donations anonymously and in cash. The president of a Detroit mosque told the ACLU, "We have seen the cash percentage of donations to the mosque and to charitable causes have gone up, and checks have gone down."⁵⁹ He also noted, "Instead of giving checks to legal organizations like Islamic Relief or LIFE to support people in Gaza or Iraq, people at fundraisers want to write checks to the mosque and then have the mosque send the money."⁶⁰ The president of a Texas mosque similarly told the ACLU, "When I was president of the mosque, I could see after the HLF case the donations coming by check were reduced, and instead it was cash.... We would prefer to go through proper channels, through charitable organizations rather than friends going overseas."⁶¹

A number of American Muslims who have volunteered as fundraisers for Muslim charities, reported that they have seen a significant increase in cash donations from Muslim donors. One Muslim man who has volunteered as a fundraiser for charity told the ACLU, "When I was traveling around the country fundraising for charity I

an ACLU case challenging the seizure of the assets of Kindhearts for Charitable Humanitarian Development, several humanitarian and philanthropic organizations, including Grandmothers Without Borders, ICBY, NCS, and Openness for the World, et al, filed the suit. The suit challenges the policies that have created a climate of fear and intimidation among nonprofit organizations, discouraging them from doing their critical humanitarian work—particularly in conflict-torn regions that are most in need—for fear of being arbitrarily subjected to these actions and policies themselves.... In effect, the government's actions and policies are counterproductive to its efforts to counter terrorism because they discourage and undermine the vital work of (non-profit organizations).¹⁵² In 2006, a group of humanitarian organizations, including Oxfam, Operation USA, Middle East Children's Alliance, and the Unitarian Universalist Service Committee, filed a friend-of-the-court brief asking a federal court to narrow the material support laws because of the chilling effect on their relief work, arguing

Designated terrorist groups and organizations are in many war-torn areas. In civil war and rebel groups and designated terrorist organizations control territory in conflict areas and other territories in which they are active. For example, in the north and east Sri Lanka, northern Iraq, western Pakistan, Somalia, southern Lebanon, parts of the Occupied Palestinian Territories, and south and east Colombia, to mention just a few examples.⁵⁴ The ambiguities of the material support laws and policies create risks for humanitarian aid groups seeking to provide aid to needy civilians in these areas. According to terrorism financing policy expert Ibrahim Warde, "This policy of designation groups and then trying to find a six degrees of separation logic [of guilt by association], it has a chilling effect because throughout the Islamic world you can always be linked to some designated group. It complicates the entire task of charity and philanthropy worldwide."⁵⁵ Warde offered the following example: "Considering that Hamas controls the government all over Gaza, it means that any group doing anything in Gaza could be legitimately linked to Hamas, so for any charity, not just Islamic charities, you can't do anything in Gaza without some involvement with Hamas on some level. Almost by definition if you are trying to donate money to relieve problems on the Gaza Strip you can be accused of funding terrorism."⁵⁶ In fact, the material support provisions are so broad that, in theory, even the International Committee of the Red Cross could be prosecuted under the material support law for the aid it provides in Gaza and other hotspots.

"These actions and policies have created a climate of fear and intimidation among non-profit organizations, discouraging them from doing their critical humanitarian work—particularly in conflict-torn regions that are most in need—for fear of being arbitrarily subjected to these actions and policies themselves. In effect, the government's actions and policies are counterproductive to its efforts to counter terrorism because they discourage and undermine the vital work of non-profit organizations."⁵⁷

Warde wrote of the global impact of U.S. terrorism financing policies in *The Price of Fear: The Truth Behind the Financial War on Terror*, "Reforming the Islamic charities system was long overdue, yet post-September 11 policies proved mostly counterproductive; they weakened mainstream, uncontrollable charities, while building up informal, unchecked, and potentially dangerous charitable and donor networks."⁵⁸

d. Chilling Effect on Overseas Humanitarian Relief Efforts

I have done quite a lot of humanitarian relief work in religious camps in Afghanistan and Pakistan. I was part of a fair-weather charity for some time, but I have since left. I have seen the effects of the material support laws in Pakistan. I did fundraise in mosques and now I am not able to raise that much—those funds are dwindling, and we collect one sixth of the amount we used to fundraise. People are scared to give for overseas assistance because of the clamping down on charities. So now we are closing that orphanage.

—Malika B., humanitarian relief worker, Richardson, TX⁵⁹

The overbreadth and vague material support laws and the climate of fear created by terrorism financing policies have impacted humanitarian work overseas and cost lives. U.S. policies and practices discourage and undermine the vital humanitarian work of humanitarian and philanthropic organizations. Not only do these policies affect those who relied on aid—including food, shelter, medical care, and education—from humanitarian and philanthropic organizations, but these policies also undermine the U.S. government's efforts to counter terrorism by making it more difficult for U.S. charities to operate in parts of the world where their good works could be most effective in winning the battle of hearts and minds.

saw that people want to give cash rather than by credit card or check, in order to avoid facing problems. People are scared to give by check; they worry about how to have the money not be traced."⁶⁰

Muslim donors and Muslim community leaders pointed out that this consequence of the government's terrorism financing policies actually complicates efforts to track funds from to suspected terrorists. One American Muslim leader, Abdullahi Ahmed Abdirahman, said, "Muslims are naturally inclined to give, but the government has made it so difficult to do so. It has made the task of figuring out flows to the real terrorists much more difficult.... In terms of being able to track the money, it does complicate the task. These government agencies that are trying to figure out where the money is going, since most of the money is going through cash, it's much more difficult to track. [These] policies would be no way to verify that the money has gone to the intended beneficiaries. It muddies the waters."⁶¹

Islamic banking and finance expert Ibrahim Warde told the ACLU that terrorism financing measures are driving donations into hiding, undermining the government's goal of tracking flows of funds. Warde said,

On the global level, most of these terrorist financing measures are so heavy-handed that they have driven a lot of the money underground and undermined efforts to figure out where the money goes, when it has to do with real terrorism. It has made the task of figuring out flows to the real terrorists much more difficult.... In terms of being able to track the money, it does complicate the task. These government agencies that are trying to figure out where the money is going, since most of the money is going through cash, it's much more difficult to track. [These] policies would be no way to verify that the money has gone to the intended beneficiaries. It muddies the waters."⁶²



LIFE for Relief and Development, a Michigan-based Muslim charity that is known as the largest American Muslim charity in the world, is providing emergency relief aid to widows of the 2004 tsunami in Bangladesh. The cyclone killed over 1300 people and affected over 9 million according to UNICEF (LIFE for Relief and Development)

Lankan government. The U.S. government designated the LTTE as an FTO, but for the 500,000 people living within its territory, the LTTE operates as an authoritarian military government. As a result, providing humanitarian aid to needy people in this part of Sri Lanka almost inevitably requires dealing with the LTTE. The ACLU opposes such aid because there is no humanitarian assistance from material support laws (only the provision of medicine and religious materials are exempted), aid workers in conflict zones like Sri Lanka are at risk of prosecution by the U.S. government. Anujanathan explained the chilling effect of these laws:

I have spoken personally with doctors, teachers, and others who want to work with people desperately needing their help in Sri Lanka, but fear liability under the "expert advice," "training," and "personnel" provisions of the law. I also know people who feared to send funds for urgent humanitarian needs, including clothing, tents, and even books, because they thought that doing so might violate the material support laws. I have also consulted with organizations, in my capacity as an ACLU attorney, that seek to send money for humanitarian assistance to areas controlled by designated groups. I have heard these organizations express grave concerns about continuing their work for precisely these reasons. Unfortunately, the fears of these organizations are well-justified. Our Department of Justice has argued that doctors seeking to work in areas under LTTE control are not entitled to an injunction against prosecution under the material support laws, and it has even succeeded in winning deportation orders under the immigration laws defining the material support laws. I have seen people being sent to camps and shelter in Sri Lanka who belong to terrorist organizations even if that group is not designated.¹²⁴

The material support laws have also imposed limits on conflict resolution programs. For example, the Humanitarian Law Project has been blocked

from providing human rights and conflict resolution training to the LTTE and the Kurdistan Workers' Party (PKK) because the Department of Justice argues this is illegal material support of terrorism.¹²⁵

Terrorism financing policies have chilled humanitarian relief in a number of conflict situations and natural disasters.

U.S. terrorism financing laws are counterproductive to the U.S. government's efforts to fight terrorism by making it more difficult for U.S. charities to operate in parts of the world where their good works could be most effective in winning the battle of hearts and minds. A former Department of Treasury official who asked not to be named told the ACLU, "By making people paranoid about giving, we are not making the problem [of terrorism] any better. This is essentially the rub. [Going after terrorism financing] is an important thing to do, but at the same time we know that there has been a drop-off in giving, and that's exactly the wrong way to do this. We want more money going to the right places."¹²⁶

Experts suggest that humanitarian assistance more effectively counters terrorism by addressing the root causes of terrorism.¹²⁷ Humanitarian organizations' relief efforts address the root causes of terrorism, by providing health care and education services, fostering sustainable community development, and encouraging democratic institutions. The United States has a long history of participating in the global effort to counter terrorism, particularly in regions devastated by armed conflict, natural disasters, and severe poverty. Some programs of humanitarian organizations directly prevent the growth and spread of terrorist organizations and activities by promoting nonviolent conflict resolution and fostering opportunities for democratic

in a particularly stark example, the material support laws imposed limits on disaster relief in areas of Sri Lanka devastated by the 2004 tsunami, because these laws arguably barred provision of such goods which are not medicine but nonetheless serve a critical medical function. In testimony before Congress in 2005, ACLU of Southern California member and former ACLU attorney, Gary a first-hand account of the difficulties he witnessed while providing humanitarian aid to victims of the tsunami in Sri Lanka.¹²⁸ At the time of the tsunami approximately one-fifth of Sri Lanka was controlled by the Liberation Tigers of Tamil Eelam (LTTE), an armed group fighting against the Sri

that the laws seriously jeopardize their capacity to serve civilian populations in conflict zones.¹²⁹

Terrorism financing policies have chilled humanitarian relief in a number of conflict situations and natural disasters, including post-tsunami relief in Sri Lanka, earthquake relief in Pakistan, humanitarian aid to the Kashmiri Muslim aid to the Eritrean people, and the 2005 federal law that prohibits, for example, the executive director of KinderUSA, which provides relief aid in Gaza, told the ACLU, "I think there are many U.S.-based charities—not just Muslim charities—that have stopped work in Gaza, because they are fearful of running afoul of the law; they can't take the risk."¹³⁰

their survival.⁵⁰ Before its closure, Al-Barakaat was Somalia's largest employer and ran the country's only water-purification plant. In Somalia, Al-Barakaat's closure led to the loss of 700 jobs and the continuation of a charity program. Later, the U.S. design team at the Millennium Challenge Corporation's (MCC) Somalia office worldwide led to the closure of embassies throughout Somalia; over 3,000 orphans were turned out into the street and another 700 jobs were lost as a result.⁵¹ These consequences are problematic to the rule of law and arguably promote a breeding ground for violence.⁵² And yet in the case of Al-Barakaat, any measurable gain in security was illusory, as discussed in section IV of this report, the 9/11 Commission staff found that the U.S. had "no direct evidence at all of any real link between al-Barakaat and terrorism of any type," and the freezing of its assets was an embarrassment for the Treasury Department when foreign government and court review found no evidence of terrorism financing.⁵³

participation. Noting that, "when people lose hope, when societies break down, when countries are created," the 9/11 Commission staff recommended that "a comprehensive U.S. strategy to counter terrorism should include economic policies that encourage development, which opens additional opportunities for people to improve the lives of their families and enhance prospects for their children's future."⁵⁴

For example, in Somalia, the consequences of the Treasury Department's designation of two organizations raise concerns that terrorism financing policies may undermine global security. The closure of Somali remittance agency Al-Barakaat was akin to closing the central bank of Somalia—even the United Nations used Al-Barakaat to transmit money for its relief operations in the country—and many impoverished Somali families had relied on remittances transmitted through Al-Barakaat for

“The freedom of religion, that’s why the Puritans came here to settle in the U.S. I believe in the Constitution that was set forth by our forefathers, who were so enlightened and had such broad minds to set forth the most basic rights in our Constitution. But for our government to go directly against that, against our right to practice our religion—because a fundamental tenet of our religion is being infringed upon—that’s not the right thing to do. Religious persecution was the first and foremost reason why people came to America. To restrict religious freedom is to erode a fundamental pillar of this country.”

XI.
International Human Rights and Constitutional Legal Standards

When the government abandons law to protect us from terrorists then we are under even greater danger. What are being abandoned are human achievements that were fought for many years ago—the common law, the Magna Carta, the Bill of Rights. These were achievements that were made over centuries, and to say we can get rid of them because of the war on terror suggests that we’ve already lost. Shutting down a charity without showing any evidence, in exchange for these rights, is a violation of the most basic rights of our Constitution, of our country, of liberty fought for over hundreds of years.

—Former Assistant Secretary of the Treasury, Paul Craig Roberts™

Religious freedom and freedom of association are enshrined as fundamental rights in international human rights law and under the U.S. Constitution. The United States has a long history of Civil and Political Rights and the International Convention on the Elimination of All Forms of Racial Discrimination, the United States must respect freedom of religious belief, practice, observance and worship; must protect freedom of association; and must guarantee freedom of religion and association without distinction as to race, color, or national or ethnic origin.

Freedom of religion and association are fundamental rights protected by the First Amendment of the U.S. Constitution. One Muslim community leader noted, “This country was built on certain principles enshrined in the Constitution—principles of

tolerance, secularism, democratic norms, providing freedom of speech and religion. When these basic freedoms are curbed, we are doing a great disservice to the mandate on which this country was built.”⁵⁹ A U.S.-born Muslim explained,

The freedom of religion, that’s why the Puritans came here to settle in the U.S. I believe in the Constitution that was set forth by our forefathers, who were so enlightened and had such broad minds to set forth the most basic rights in our Constitution. But for our government to go directly against that, against our right to practice our religion—because a fundamental tenet of our religion is being infringed upon—that’s not the right thing to do.... Religious persecution was the first and foremost reason why people came to America. To restrict religious freedom is to erode a fundamental pillar of this country.⁶⁰

a. Religious Freedom

Freedom of religion and expression lead to a strong and vibrant civil society that only strengthens the state.... An enduring commitment to the rule of law is the only way to achieve the security that comes from justice for all people. Robust minority rights let societies benefit from the full measure of contributions from all citizens.

—President Barack Obama, April 6, 2009⁶¹

The limitation of American Muslims’ charitable donations in accordance with their religious beliefs is inconsistent with American values and violates American Muslims’ religious freedom as enshrined in international human rights law and undermines American Muslims’ right to free and full exercise of religion under the U.S. Constitution.

As a state party to the International Covenant on Civil and Political Rights (ICCPR), the United States must ensure the right to freedom of thought,

b. Non-Discrimination

Enforcement actions against U.S.-based charities disproportionately impact Muslims and violate non-discrimination principles enshrined in international law. In international human rights law, freedom from discrimination on the basis of religion and race is a non-delegable right which cannot be limited, even in times of public emergency. Because U.S. terrorism financing policies and enforcement actions have a discriminatory effect on Muslims, these policies violate basic international human rights. Under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), which the United States ratified in 1994, the United States must guarantee that individuals are not discriminated against on the basis of race, color, or national or ethnic origin, in their right to freedom of thought, conscience and religion.⁶⁴ ICERD prohibits any distinction, exclusion, restriction or preference based on race, color, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.⁶⁵

In its General Recommendation 31, the Committee on the Elimination of Racial Discrimination (CERD Committee), the UN body empowered to interpret the CERD treaty, highlighted "the potential indirect discriminatory effects of certain domestic legislation, particularly legislation on terrorism...as well as legislation that has the effect of penalizing without legitimate grounds certain groups or membership of certain communities."⁶⁶ The CERD Committee recommended, "States should seek to eliminate the discriminatory effects of such legislation and any case of racial or ethnic groups, in particular, to prohibit such as racial or ethnic groups, immigrants, and other vulnerable groups which are

particularly exposed to exclusion, marginalization and non-integration in society.

The ICCPR also protects against discrimination on the basis of religion. Article 2(1) of the ICCPR specifically requires countries to respect and ensure rights to all individuals without distinction of any kind. Article 26 states "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law." The prohibition on religious and racial discrimination is absolute, even in times of national emergency (Article 4). Article 26 places an obligation on countries to ensure that "the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as...religion." Article 26 prohibits discriminatory laws and has been interpreted to apply to "any field regulated and protected by public authorities."

Articles 2 and 7 of the UDHR also enshrine the principle of non-discrimination, which is a basic principle of international human rights law: "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

The UN General Assembly issued a Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, calling on all countries to "take effective measures to prevent and eliminate discrimination on the grounds of religion or belief...in all fields of civil, economic, political, social and cultural life," and to prohibit any such discrimination where necessary to prohibit any such discrimination.⁶⁷ The Declaration also contains strong language prohibiting religious discrimination as an "affront to human dignity" and a violation of human rights and fundamental freedoms. The Declaration defines religious discrimination as "any distinction, exclusion, restriction

or preference based on religion or belief and having as its purpose or as its effect nullification or impairment of the recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal basis.

In its Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, the UN General Assembly reiterated the principle of freedom of religion and freedom from religious discrimination, declaring that "Persons belonging to national or ethnic, religious and linguistic minorities have the right...to profess and practice their own religion...in private and in public, freely and without interference or any form of discrimination."⁶⁸ The Declaration states that countries must "take measures to create favorable conditions to enable persons belonging to [religious] minorities to express their characteristics and to develop their...religion, traditions and customs, except where specific practices are in violation of national law and contrary to international standards."

c. Freedom of Association and Assembly

Freedom of association is protected by international human rights law and the U.S. Constitution. The UDHR enshrines the right to freedom of association, stating, "Everyone has the right to freedom of peaceful assembly and association" (Article 20(1)).⁶⁹ The ICCPR also requires parties to the treaty to protect the right to freedom of association, stating, "The right of peaceful assembly shall be recognized" (Article 21) and "Everyone shall have the right to freedom of association with others" (Article 22(1)).⁷⁰ The ICCPR allows for restrictions on the right to freedom of association and assembly that are "prescribed by law" and "which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public

health or morals or the protection of the rights and freedoms of others."⁷¹

Article 16(1) of the American Convention on Human Rights protects the right to "associate for religious, ideological, or other purposes, to organize for religious, ideological, economic, labor, social, cultural, sports, or other purposes."⁷² The Convention also states that "The exercise of this right shall be subject only to such restrictions established by law as may be necessary in a democratic society, in the interest of national security, public safety or public order, or to protect public health or morals or the rights and freedoms of others."⁷³ The American Declaration of the Rights and Duties of Man, which the United States is bound to as a member of the Organization of American States, similarly provides for the right of association, stating in Article XVII, "Every person has the right to associate with others to promote, exercise and protect his legitimate interests of a political, economic, religious, social, cultural, professional, labor union or other nature."⁷⁴

In its Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms known as the "Declaration of the Rights of Human Rights Defenders", the General Assembly provides in Article 5 that, "For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels, to meet or assemble peacefully, to form, join, participate in non-governmental, religious, political, trade unions, and other organizations, and to cooperate with non-governmental or intergovernmental organizations."⁷⁵

International law recognizes that the right to freedom of religion requires the right to freedom of association to be fully realized. In its General Comment 23 on the Rights of Minorities, the UN Human Rights Committee, which monitors compliance

with the ICCPR, stated that individuals belonging to minorities have the right to freedom of association and assembly just as any other individual in the territory of the State party, and "should not be denied the right, in community with members of their group...to practice their religion... The United States Department of Religion and Public Affairs (DPR) responded to her comment to the United Nations General Assembly in 2004, "The right to freedom of religion or belief needs other human rights to be fully exercised, including the right to freedom of association or the right to freedom of expression."⁴¹⁹

Freedom of association is a fundamental right protected by the First Amendment of the U.S. Constitution. Although association is not included among those freedoms enumerated in the First Amendment, the Supreme Court has expressly declared that freedom of association is an inseparable aspect of the right to speech and assembly protected by the First Amendment.⁴²⁰ In its First Amendment jurisprudence, the Supreme Court has generally protected the right to associate for purposes of engaging in expressive First Amendment-protected activities such as the exercise of religion.⁴²¹

In *Roberts v. United States Jaycees*, the Supreme Court stated, "we have long understood as implicit in the right to engage in activities protected by the First Amendment a corresponding right to associate with others in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends."⁴²² The Supreme Court further stated that an "individual's freedom to speak, to worship... and to associate with others for religious purposes by the state effort toward those ends were not also guaranteed."⁴²³ In *NAACP v. Alabama ex rel. Patterson*, the Supreme Court held that a court order compelling the NAACP to disclose records containing the names and addresses of its members violated the organization's freedom of association.⁴²⁴ The Court recognized that freedom to associate for

the advancement of beliefs and ideas is integral and inseparable from freedom of speech.

Furthermore, donation of money is a form of speech protected by the First Amendment, and the limitation of contributions to the United States does not violate the rights of Muslim donors. Although monetary donations do not receive the full protection that political speech receives, heightened scrutiny of limitations still applies.⁴²⁵

d. International Law on Counterterrorism Measures

The manner in which the government has designated Muslim charities and seized their assets contravenes international law mandating that counterterrorism measures comply with human rights principles. Numerous UN resolutions declare that counterterrorism measures must comply with human rights obligations. These resolutions do not have the binding character of ratified treaties, but are persuasive legal documents that repeatedly reiterate this principle. In Security Council Resolution 1456 (2003), the Security Council declared that "States must ensure that any measure taken to combat terrorism comply with all their obligations under international law, and should adopt such measures in accordance with international law, in particular international human rights, refugee, and humanitarian law."⁴²⁶ General Assembly Resolutions 59/197 (2004), 60/158 (2006), and 62/159 (2007) on the "Prevention of Human Rights and Fundamental Freedoms while Countering Terrorism,"⁴²⁷ Commission on Human Rights Resolutions 2003/68, 2004/97, and 2005/80 ("Prevention of Human Rights and Fundamental Freedoms while Countering Terrorism"),⁴²⁸ Commission on Human Rights Resolution 2003/37 ("Human Rights and Terrorism"),⁴²⁹ and UN Security Council Resolution 1364 ("Treaties to International Peace and Security Caused by Terrorist Acts")⁴³⁰ reiterate this principle.

In its Statement on Racial Discrimination and Measures to Combat Terrorism (2002), the CERD Committee, charged with interpreting CERD, recognized threats to religious freedom and possible targeted attacks at discrimination post-9/11, and stated that "The United States has a duty to take steps in accordance with the Charter of the United Nations and they are only legitimate if they respect the fundamental principles and the universal recognized standards of international law, in particular, international human rights law and international humanitarian law."⁴³¹ Further, the CERD Committee announced it "Demands that States and international organizations ensure that measures taken in the struggle against terrorism do not discriminate in purpose or effect on grounds of race, colour, descent, or national or ethnic origin."⁴³²

The CERD Committee also issued a General Recommendation on Discrimination against Non-Citizens, according to which any measures taken in the fight against terrorism must "not discriminate, in purpose or effect, on the grounds of race, colour, descent, or national or ethnic origin" and countries must ensure "that non-citizens are not subjected to racial or ethnic profiling or stereotyping."⁴³³

Following his last official mission to review U.S. counterterrorism practices, the UN Special Rapporteur on Human Rights while Countering Terrorism condemned U.S. counterterrorism practices or profiling based on religion: "The Special Rapporteur recommends that all States, including the United States, do not act in a manner which might be seen as appearing the use of race and religion for a generalization or persons as a basis for profiling. The UN Special Rapporteur also urged the application of material support laws to donors of Muslim charities, and expressed concern about the material support laws and in particular the USA PATRIOT Act of 2001 provision expanding forms of conduct that can amount to material support of terrorism. The UN Special Rapporteur found that the provision,

...is expressed in terms that are not exclusive and thereby renders the expression 'material support' too vague. This lack of precision is particularly problematic for committees, including watchdogs, which are unable to determine whether a provision of funds by them to what they may believe are charities or humanitarian organizations abroad will be treated as material support to a terrorist entity. The Special Rapporteur observes that any determination of proscribed status of organizations, including purported charities, should be public, transparent, non-retroactive and reasoned.⁴³⁴

The Special Rapporteur specifically recommended that the U.S. reform its material support statutes in order to bring the laws into compliance with international standards. He "urged" the Government to restrict definitions of 'international terrorism', 'domestic terrorism' and 'material support to terrorist organizations' in a way that is precise and restricted to the type of conduct identified by the Security Council as conduct to be suppressed in the fight against terrorism.⁴³⁵

After a three-year investigation of the worldwide impact of counterterrorism laws in 40 countries, including 16 hearings, an independent panel of eminent judges and lawyers convened by the International Commission of Jurists (ICJ) released a report of its findings. The ICJ concluded, "Valid arguments can be made for pursuing such offences (as providing material support to terrorists), but examples of chilling effect and of serious human rights abuses are provided. States should be urged to provide explicit such human rights safeguards, and must take precautions not to destroy lives and reputations of individuals who may come to be publicly portrayed as dangerous terrorist associates, despite having no actual involvement in terrorist activities."⁴³⁶

XII. Acknowledgments

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598 UN Human Rights Committee General Comment 22, *supra* note 596, para. 6 ("In interpreting the scope of permissible limitation clauses, States parties should proceed from the need to protect the rights guaranteed under the Covenant, including the right to equality and non-discrimination on all grounds.... [Paragraph 3 of article 18 is to be strictly interpreted; restrictions are not allowed on grounds not specified there, even if they would be allowed as restrictions to other

rights protected in the Covenant, such as national security. Limitations may be applied only for those purposes to which the Covenant is applicable, and they must be prescribed by law. Any such restrictions must be necessary and proportionate. Restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner.")

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606 *Id.* § 230(b)(1)-(2).

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609 International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), adopted December 21, 1965, S.A. Res. 2106 (XXI), annex, 20 U.S.T. 1445, entered into force Jan. 4, 1969, hereinafter *ICERD*, art. 1(1), ¶ 1(5), entered into force July 7, 1982, hereinafter *ICERD*, art. 1(1)(b).

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611 *Id.* at art. 1(1).

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620 *MADOP v. Ababara et al.*, Peterson, 357 U.S. 449, 440 (1968).

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U.S. terrorist financing laws expanded after September 11, 2001. (Trade executive branch officials with virtually unlimited power to designate charities as terrorist organizations and seize all their assets, effectively shutting them down. Today, terrorism financing laws are overly broad and lack procedural safeguards that would protect American citizens against government intrusion and abuse. These laws authorize executive branch officials to target groups on the basis of secret evidence and without notice, thereby depriving respondents of meaningful judicial review. The federal government's seizure of the assets of the Islamic Relief Foundation, a Boston-based charity, in New York have already resulted in government seizures of investigations.)

Despite the often weak waters of the veto-proof, two-thirds-vote supermajority required to pass such legislation, and made inflammatory and unproven or exaggerated allegations, when a Congressional Muslim Committee, led by American Muslims fear-making, chargeable, denigrates to associates with their religious beliefs. Other specific federal law enforcement practices, including widespread interviews of Muslim donors about their charitable donations, evidence of reconditing, also intimidate American Muslims, free and call swerve of their religion through charitable giving, or Zakat, one of this case. The pillars of Islam and a religious obligation for all observant Muslims.

This report discusses the effect of U.S. government actions on American Muslims, exercise of their rights, profess and practice their faith through charitable giving. The ACLU's research shows that U.S. terrorism financing policies and practices are seriously undermining their charitable giving, protected constitutional liberties and violating human rights. The report also discusses the impact of religion, freedom of conscience, and freedom from discrimination, particularly on the rights of Muslims, and the impact of terrorism financing on the rights of American Muslims. American Muslims should take to ensure American Muslims can exercise their religion, while maintaining charitable from mosque, mosque and abuse, and simultaneously promoting national security and humanitarianism.





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Chief Operating Officer

June 4, 2010

The Honorable Dennis Moore, Chair
The Honorable Judy Biggert, Ranking Member
House Committee on Financial Services
Subcommittee on Oversight and Investigations
2129 Rayburn House Office Building
Washington, DC 20510

RE: Anti-Money Laundering: Blocking Terrorist Financing and Its Impact on Lawful Charities

Dear Representatives Moore and Biggert:

I am writing in connection with the Subcommittee on Oversight and Investigations Hearing that took place on Wednesday, May 26, 2010, entitled *Anti-Money Laundering: Blocking Terrorist Financing and Its Impact on Lawful Charities*. The Constitution Project would like to submit for the record of that hearing the appended report by our bipartisan Liberty and Security Committee, *Reforming the Material Support Laws: Constitutional Concerns Presented by Prohibitions on Material Support to "Terrorist Organizations."*

As you may know, the Constitution Project is an independent think tank that works to promote and defend constitutional safeguards. We bring together policy experts, former government officials, and legal scholars from across the political spectrum to produce consensus policy recommendations on difficult constitutional questions. To learn more about the work of the Constitution Project, please visit us at www.constitutionproject.org.

The key findings of our Liberty and Security Committee's report on reforming the material support laws are as follows:

- Although cutting off support of terrorist activity is an important part of the United States' counter-terrorism strategy, the material support laws sweep too broadly and are in need of significant reform. Existing federal laws that make it illegal to provide "material support" to groups that the government has designated as "terrorist" go far beyond the criminalization of financial support, and trench on important First and Fifth Amendment rights, because they define "material support" so expansively and vaguely as to criminalize pure speech furthering only lawful, nonviolent ends. In addition, because the law likely criminalizes any conduct undertaken under a designated group's direction or control, it appears to penalize pure association.
- The material support laws intrude upon important due process rights regarding the process by which groups and individuals are designated as "terrorist." They give the executive branch extraordinarily broad discretion to designate individuals and groups, and provide little process to those who have been designated.

June 4, 2010
Page 2

The committee made eight specific recommendations for reforms to cure these deficiencies. These recommendations include:

Narrowing the Scope of the Material Support Prohibitions

- Congress should carefully craft an amendment to expand the category of support or resources exempt from the definition of material support beyond “medicine or religious materials” to also include such humanitarian aid items as medical services, civilian public health services, and, if provided to noncombatants, food, water, clothing, and shelter.
- Congress should amend the definition of “material support” to provide that pure speech may be punished only if it is intended to further illegal conduct.

Requiring Due Process

- Congress should amend 8 U.S.C. § 1189 to require the responsible federal agency to provide designated organizations that have a presence in the United States with notice of the charges and evidence against them in sufficient detail to ensure that they have a meaningful opportunity to respond to the charges against them.
- Congress should amend IEEPA to require, consistent with the Fourth Amendment, that the Treasury Department must obtain judicial authorization based on probable cause that an organization with a presence in the United States has violated IEEPA before freezing such an entity’s assets. The statute should include an exception for cases where the government reasonably fears that the assets will be removed from the country unless the assets are immediately frozen, so that there is not sufficient time to obtain a warrant. Any such action should, consistent with the Fifth Amendment, be subject to a probable cause hearing shortly after the action is completed.

Please do not hesitate to contact me with any questions you may have regarding this report or if we can be of further assistance. You can reach me at 202-580-6928 or sfranklin@constitutionproject.org. Thank you very much for your important work on this and so many critical issues.

Sincerely,



Sharon Bradford Franklin
Senior Counsel

Cc: Members of the Subcommittee on Oversight and Investigations

The
Constitution Project



**REFORMING THE MATERIAL SUPPORT LAWS:
CONSTITUTIONAL CONCERNS PRESENTED BY
PROHIBITIONS ON MATERIAL SUPPORT TO
"TERRORIST ORGANIZATIONS"**

A REPORT BY THE CONSTITUTION PROJECT'S
LIBERTY AND SECURITY COMMITTEE

November 17, 2009

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**REFORMING THE MATERIAL SUPPORT LAWS: CONSTITUTIONAL CONCERNS PRESENTED BY
PROHIBITIONS ON MATERIAL SUPPORT TO "TERRORIST ORGANIZATIONS"**

Cutting off support of terrorist activity is an important and legitimate part of the United States' counter-terrorism strategy. Our government should have the tools needed to apprehend and punish not just terrorist leaders, but also those who work to facilitate and enable acts of terrorism. But in providing the legal authority to prohibit and punish such conduct, it is essential that the law respect constitutional freedoms.

Existing federal laws make it illegal to provide "material support" to groups that the government has designated as "terrorist." In their current form, these laws raise serious concerns under the First and Fifth Amendments, because they define "material support" so expansively and vaguely as to criminalize pure speech furthering only lawful, nonviolent ends. The legal prohibitions are not limited to those who engage in such speech to support the illegal or terrorist acts of so-called terrorist organizations. They criminalize even speech that is intended to further, and in fact only furthers, lawful, peaceful, and nonviolent activities. Indeed, the criminal bar is so sweeping that it applies even to aid that is designed to *reduce* a group's resort to violence by encouraging the peaceful resolution of disputes, and even where the aid can be shown to have had precisely that beneficial effect. In addition, because the law likely criminalizes any conduct undertaken under a designated group's direction or control, it appears to penalize pure association. These aspects of the "material support" definition go far beyond the criminalization of financial support, and trench on important First and Fifth Amendment rights.

These concerns are not hypothetical. Federal prosecutors have invoked these laws to prosecute a student for running a web site that included links to other web sites featuring jihadist rhetoric by individuals associated with designated groups;¹ a satellite television provider for including a television channel run by another designated group;² and a lawyer for communicating to a reporter a statement from the leader of another designated group.³ Moreover, in a long-running case now pending before the Supreme Court, the government has defended the application of these laws to prohibit a U.S. human rights group's efforts to provide training in human rights advocacy and assistance in peacemaking to a designated group.⁴

The material support laws also raise constitutional concerns regarding the process by which groups and individuals are designated as "terrorist." They give the executive branch extraordinarily broad discretion to designate individuals and groups, and provide little process to those who have been designated. As a result, they intrude upon important due process rights, at least when applied to individuals and entities with a presence in the United States.

¹ Susan Schmidt, "Saudi Acquitted of Internet Terror," Wash. Post, June 11, 2004, at A3. A jury acquitted the student of all "material support" charges.

² Benjamin Weiser, "A Guilty Plea in Providing Satellite TV for Hezbollah," N.Y. Times, Dec. 23, 2008, at A21, available at <http://www.nytimes.com/2008/12/24/nyregion/24plea.html>.

³ *United States v. Sattar*, 272 F. Supp.2d 348, 385 (S.D.N.Y. 2003) (declaring prohibition on providing "personnel" and "communications" to a designated group unconstitutionally vague). The government subsequently dropped those charges and issued a superseding indictment charging the lawyer with providing support to terrorist activities.

⁴ *Humanitarian Law Project v. Mukasey*, 552 F.3d 916, 920-922 (9th Cir. 2008), cert granted sub nom. *Humanitarian Law Project v. Holder*, 78 U.S.L.W. 3169 (U.S. Sept. 30, 2009) (No. 08-1498).

For these reasons and as outlined further below, we, the undersigned members of the Constitution Project's bipartisan Liberty and Security Committee, believe that the material support laws are in need of significant reform. This report addresses only the constitutional concerns raised by the application of these laws to pure speech, and those raised by the failure to provide appropriate due process protections in the designation process for organizations or individuals with a presence in the United States. We take no position on whether application of these laws to prohibit financial support of designated organizations raises separate constitutional concerns, nor on whether the procedural protections owed to entities and individuals with a presence in the United States should also extend – as a constitutional or policy matter – to entities or individuals without such a presence.

At the conclusion of this report, we propose several specific reforms.

I. THE LEGAL REGIME

A. The Criminal "Material Support" Statute - 18 U.S.C. § 2339B and 8 U.S.C. § 1189

The Antiterrorism and Effective Death Penalty Act (AEDPA) of 1996, amended by the USA Patriot Act in 2001 and again in 2004, authorizes the Secretary of State to designate "foreign terrorist organizations"⁵ and makes it a crime for anyone to support even the wholly lawful, nonviolent activities of those designated organizations.⁶

The law authorizes the Secretary of State "to designate an organization as a foreign terrorist organization . . . if the Secretary finds that -- (A) the organization is a foreign organization; (B) the organization engages in terrorist activity (as defined at [8 U.S.C. § 1182(a)(3)(B)]); and (C) the terrorist activity of the organization threatens the security of United States nationals or the national security of the United States."⁷ The term "terrorist activity" is broadly defined to include virtually any unlawful use of, or threat to use, a weapon against person or property.⁸ The only exception from this terrorism definition is unlawful use of or threats to use a weapon that is engaged in for mere personal monetary gain.⁹ "National security" is also broadly defined to mean "national defense, foreign relations, or economic interests of the United States."¹⁰ The Secretary's determination that a group's activities threaten our "national security" under the statute is judicially unreviewable.¹¹ Thus, while the law requires that a designated group have engaged in or threatened to use force in some way, it also permits the executive to choose among the many groups that fit that broad criterion on the basis of unreviewable political judgments about what jeopardizes our economic interests or foreign relations.

⁵ 8 U.S.C. § 1189(a).

⁶ See 18 U.S.C. § 2339B.

⁷ 8 U.S.C. § 1189(a)(1).

⁸ See *id.* § 1182(a)(3)(B).

⁹ See *id.* § 1182(a)(3)(B)(iii)(V).

¹⁰ 8 U.S.C. § 1189(d)(2).

¹¹ *People's Mojahedin Org. of Iran v. U.S. Sec. of State*, 182 F.3d 17, 23 (D.C. Cir. 1999), *cert. denied*, 529 U.S. 1104 (2000).

Once the Secretary designates an organization and publishes the designation in the Federal Register, it becomes a crime, punishable by up to fifteen years of imprisonment (or life imprisonment if death results) and a substantial fine, to "knowingly provide[] material support or resources to a foreign terrorist organization, or [to] attempt[] or conspire[] to do so."¹²

"Material support or resources" is defined as:

any property, tangible or intangible, or service, including currency or monetary instruments or financial securities, financial services, lodging, training, expert advice or assistance, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel (1 or more individuals who may be or include oneself), and transportation, except medicine or religious materials.¹³

In applying this statute, the Executive Branch has maintained that Congress in effect adopted an irrebuttable presumption that *all* support to such organizations furthers their terrorist ends.¹⁴ The only exception from this broad prohibition is that the statute explicitly permits the donation of unlimited amounts of medicine and religious materials to designated organizations. Thus, in addition to being overbroad, the statute expressly discriminates between religious and political aid, permitting unlimited amounts of religious aid (even if it is intended to further terrorist activity),¹⁵ while barring all political aid, even if it is designed to counter terrorism and promote peace.

Once the Secretary of State designates a group and publishes that fact in the Federal Register, the designated group may file a legal challenge in the United States Court of Appeals for the District of Columbia Circuit.¹⁶ The court of appeals, however, does not consider any new evidence, but reviews only the evidence the State Department developed unilaterally in its designation process.¹⁷ The government may, and generally does, present the bulk of its evidence in secret, so the designated group is not able to see the evidence used against it. The court of appeals may only set aside a designation if the Secretary's actions are arbitrary and capricious, and lack substantial support in the administrative record or in classified information submitted to the court.¹⁸ To date, no group has succeeded in overturning its designation under this law.¹⁹

¹² 18 U.S.C. § 2339B(a).

¹³ *Id.* § 2339A(b).

¹⁴ See AEDPA, Pub. L. No. 104-132, §301(a)(7), 110 Stat. 1214, 1247 (April 24, 1996).

¹⁵ 18 U.S.C. § 2339A prohibits the provision of "material support or resources" for the purpose of furthering specified terrorist activities, but then exempts the provision of "medicine or religious materials" from the definition of "material support." Accordingly, even if an individual donated medicine *for the purpose of furthering terrorist activity*, his action would not be prohibited by the "material support" provisions, 18 U.S.C. §§ 2339A and 2339B.

¹⁶ 8 U.S.C. § 1189(c)(1).

¹⁷ *Id.* § 1189(c)(2).

¹⁸ *Id.* § 1189(c)(3)(A)-(E).

¹⁹ Immigration law also penalizes "material support." Foreign nationals can be denied entry or ordered deported for having provided material support not only to organizations designated as "terrorist," but even to organizations that have never been designated terrorist, but merely have at some point threatened to use a weapon against person or property. In one case, for example, a national of India was ordered deported for having set up a tent for religious services that were then attended by, among others, some members of an Indian guerrilla organization. *Singh-Kaur v. Ashcroft*, 385 F.3d 293, 301 (3d Cir. 2004). The Constitution Project's Liberty and Security Committee previously addressed that issue in *The Use and Abuse of Immigration Law as a Counterterrorism Tool*, available at

B. Embargoing Individuals and Groups - the International Emergency Economic Powers Act

The International Emergency Economic Powers Act (IEEPA) has also been employed to penalize support of disfavored groups and individuals.²⁰ This statute, designed to empower the President during emergencies to impose economic embargoes on foreign nations, has been used by several administrations to place embargos not on nations, but on individuals and groups. After the terrorist attacks of September 11, President Bush invoked the law to name 27 “specially designated global terrorists.”²¹ He offered no explanation for why any of them were designated as such, or any criteria used for the determination. IEEPA establishes no criteria for such designations, and accordingly gives the President a proverbial “blank check.” President Bush also authorized the Secretary of the Treasury to designate still others using extremely broad criteria.²² Under that authority, the Treasury Secretary has added hundreds of individuals and groups to the designated list. Once a group or individual is designated, all of its assets are frozen, and it becomes a crime for anyone to engage in any transaction with the group or individual, regardless of the purpose of the transaction.

As amended by the USA Patriot Act, the law also permits the Treasury Secretary to freeze an organization’s assets without even finding that it should be designated, based solely on a letter stating that the group is under investigation. The law does not require any degree of suspicion, does not require the Treasury Secretary to obtain advance judicial approval, and sets no time limit on the length that such a “block pending investigation” can last. In one case, the government has maintained a “block pending investigation” for more than three years – without any finding of wrongdoing by the affected organization.²³

Groups or individuals may challenge IEEPA designations in federal court, but the government may defend its designations using secret evidence submitted to the court *ex parte* and *in camera* – in other words in secret and without participation by a lawyer representing the designated group or person. Moreover, the Treasury Department sharply restricts the ability of a group whose assets have been frozen to use those assets in its defense.

II. CONSTITUTIONAL CONCERNS

The statutes described above prohibit association and speech in support of organizations designated on explicitly political grounds, even where the support takes the form of pure speech that aims to promote peace and discourage terrorist acts. Further, these laws grant executive branch officials effectively unreviewable discretion to target disfavored groups. The laws are so overbroad that they likely make it a crime to write an op-ed, provide legal advice, volunteer one’s time, or distribute a magazine for any “designated” group, even if there is no connection whatsoever between the individual’s speech and any illegal activity of the proscribed group.

<http://www.constitutionproject.org/manage/file/48.pdf>. In that report, we recommended that Congress amend the immigration laws to eliminate deportation and exclusion based on speech and association.

²⁰ IEEPA, 50 U.S.C. §§1701-1706 (2000).

²¹ Exec. Order No. 13,224, 66 Fed Reg. 49079 (Sept. 18, 2001).

²² *See id.*

²³ *KindHearts for Charitable Humanitarian Development, Inc. v. Geithner*, No. 3:08CV2400, 2009 U.S. Dist. LEXIS 80475 (N.D. Ohio Aug. 18, 2009).

A. First Amendment Concerns

The material support laws' application to speech and association impinge on First Amendment freedoms in two ways. First, they penalize speech solely when it is undertaken in association with a disfavored group, thereby selectively penalizing association. Second, the laws' definition of "material support" encompasses protected speech that furthers only lawful, nonviolent ends.

Guilt by association is "alien to the traditions of a free society and the First Amendment itself."²⁴ The Supreme Court first recognized these principles when addressing a series of McCarthy era laws. In those cases, the Court either narrowly construed or invalidated a host of these laws for imposing guilt by association, where the statutes penalized association with the Communist Party without requiring proof of intent to further the Communist Party's illegal ends. Congress had specifically found that the Communist Party was a foreign-dominated group engaged in terrorism for the purpose of overthrowing the United States.²⁵ The Supreme Court accepted that finding, but nonetheless ruled that even with respect to such a group, individuals could not be penalized for their associations absent proof of "specific intent" to further the group's illegal ends.²⁶

The material support statutes penalize association in two ways. They prohibit the provision of "personnel," defined as any work done under a designated group's direction or control. Since virtually anything one would do in association with a group could be said to be under its "direction or control," including, for example, sending a petition to Congress to protest the group's designation in response to a "Take Action" link on a website, this provision trenches on pure association. In addition, the statutes make the very same conduct – teaching human rights, for example – a crime if provided to a proscribed group, but permissible if provided to a non-proscribed group. Yet, contrary to the precedent established in the Communist Party cases, the material support laws require no proof that an individual's speech or association is intended to promote terrorism or other illegal ends.²⁷

The courts have largely upheld the material support laws as applied to financial support, an issue this report does not address. But they have invalidated aspects of the definition of material support that reach pure speech. Several of the terms in the definition of "material support" are expressly targeted at speech, and some discriminate on the basis of content. Thus, the law prohibits the provision of "expert advice," defined as any advice "derived from scientific, technical, or other specialized knowledge." Such a definition targets speech on the basis of its

²⁴ *NAACP v. Claiborne Hardware*, 458 U.S. 886, 932 (1982).

²⁵ Subversive Activities Control Act of 1950, ch. 1024, 64 Stat. 987 (codified as 50 U.S. § 781), *repealed by* Act of Dec. 17, 1993, Pub. L. No. 103-199, § 803(1), 107 Stat. 2329.

²⁶ *See, e.g., United States v. Robel*, 389 U.S. 258, 262 (1967) (finding that the government could not ban Communist Party members from working in defense facilities absent proof that they had specific intent to further the Party's unlawful ends); *Keyishian v. Board of Regents*, 385 U.S. 589, 606 (1967) ("[m]ere knowing membership without a specific intent to further the unlawful aims of an organization is not a constitutionally adequate basis" for barring employment in state university system to Communist Party members); *Elfbrandt v. Russell*, 384 U.S. 11, 19 (1966) ("a law which applies to membership without the 'specific intent' to further the illegal aims of the organization infringes unnecessarily on protected freedoms"); *Noto v. United States*, 367 U.S. 290, 299-300 (1961) (First Amendment bars punishment of "one in sympathy with the legitimate aims of [the Communist Party], but not specifically intending to accomplish them by resort to violence").

²⁷ The Supreme Court has held that even advocacy of illegal conduct is protected unless it is intended and likely to cause imminent unlawful action. *Brandenburg v. Ohio*, 395 U.S. 444, 447-49 (1969).

content, permitting advice derived from "general" knowledge but prohibiting speech derived from "specialized knowledge." Moreover, the impossibility of discerning whether advice is derived from general or specialized knowledge raises substantial vagueness concerns. The same problems are raised by the prohibition on "training," which permits training in "general knowledge," but not "specific skills."

In addition to discriminating on the basis of content, several of the prohibitions are unconstitutionally vague as applied to speech. How is a teacher to determine, for example, whether her training promotes "general knowledge" or a "specific skill"? How is a lawyer to determine whether his advice is "derived from scientific, technical, or other specialized knowledge"? Another provision prohibits the provision of any "service," a term left undefined, but which the government has said reaches any activity undertaken "for the benefit of" a designated group. And the "personnel" prohibition permits speech that is "entirely independent," but criminalizes speech under the "direction or control" of a group. Would an op-ed writer who accepted two edits from a designated group's leader be guilty? Citing some of these concerns, courts have struck down the prohibitions on providing "training," "expert advice or assistance," "personnel," and "service" to designated groups as unconstitutionally vague as applied to speech.²⁸

Congress found that "foreign organizations that engage in terrorist activity are so tainted by their criminal conduct that any contribution to such an organization facilitates that conduct."²⁹ On this basis, the Executive Branch has argued that broadly criminalizing support even of groups' otherwise lawful activities is necessary because support is fungible, and therefore any support, even to legitimate activities, frees up resources that can then be used to finance a group's illegal activities. While we take no position in this report on the accuracy of this finding as applied to contributions of money, financial services, or non-humanitarian physical resources to designated organizations, we agree that this finding is unsupportable as applied to contributions through speech. Congress in fact heard no testimony concerning any specific terrorist group, much less all groups that might be designated terrorist, that would support such a "finding." Moreover, the material support statutes prohibit as "material support" even pure speech designed to *discourage* resort to violence. There is no basis for concluding that, for example, training an organization in human rights advocacy would "free up" resources that the group could then use to engage in terrorism. Moreover, without any requirement to show intent to promote terrorist activity, this broad application of the material support statutes can be counter-productive, by chilling speech that might encourage lawful and nonviolent alternatives for resolving disputes.

²⁸ See *Humanitarian Law Project v. Reno*, 205 F.3d 1130, 1137-38 (9th Cir. 2000) (declaring prohibitions on providing "training" and "personnel" unconstitutionally vague); *Humanitarian Law Project v. Mukasey*, 552 F.3d 916, 928-31 (9th Cir. 2008) (declaring prohibitions on providing "training," "expert advice or assistance," and "services" unconstitutionally vague), *cert. granted sub nom.*, *Humanitarian Law Project v. Holder*, 78 U.S.L.W. 3169 (U.S. Sept. 30, 2009) (No. 08-1498); *United States v. Sattar*, 272 F.Supp.2d 348, 356-61 (S.D.N.Y. 2003) (declaring prohibitions on providing "personnel" and "communications" unconstitutionally vague).

²⁹ AEDPA, Pub. L. No. 104-132, §301(a)(7), 110 Stat. 1214, 1247 (April 24, 1996).

B. Fourth Amendment and Due Process Concerns

The process the Executive Branch employs for designating entities and individuals also raises constitutional concerns, especially when applied to an entity or individual in the United States entitled to due process protections. The IEEPA authority permits the government to freeze an entity's assets indefinitely without a finding of wrongdoing, without even a finding of probable cause, and without any prior judicial approval. Two courts have held that such action constitutes a "seizure" under the Fourth Amendment.³⁰ The same courts have held that the Treasury Department failed to provide adequate notice of the charges to the designated entities, because, among other problems, it failed to provide notice of the factual and legal basis for the charges against the groups sufficient to allow them a meaningful opportunity to respond.³¹ Other courts have rejected constitutional challenges, and permitted the government to defend its designations using secret evidence not disclosed to the challenger.³²

In general, the courts have required that where a designated entity has a presence within the United States, due process requires that it be afforded an opportunity to make a presentation to the Treasury Department as designating authority, to be included as part of the administrative record.³³ But that is the extent of the group's opportunity to defend itself – it may submit evidence in writing. No hearing is required, and accordingly there is no opportunity to present witnesses or confront the government's witnesses.

There are many more precisely calibrated ways to stem the flow of funds for terrorist activity.³⁴ Congress has made it a crime to provide material support to enable commission of a wide range of terrorist acts; those statutes focus on an individual's aid to terrorist activity, not his or her association with a proscribed group.³⁵ Conspiracy and "aiding and abetting" statutes penalize persons who engage in overt acts in furtherance of terrorist conduct, even if the ultimate wrongdoing never comes to fruition.³⁶ Money laundering statutes expressly prohibit the transmission of money or funds with the intent of promoting terrorist activity.³⁷ And the

³⁰ *KindHearts for Charitable Humanitarian Development, Inc. v. Geithner*, No. 3:08CV2400, 2009 U.S. Dist. LEXIS 80475, at *22-27 (N.D. Ohio Aug. 18, 2009); *Al Haramain Islamic Fdn, Inc. v. Dept of Treasury*, 585 F. Supp. 2d 1233, 1262-64 (D. Or. 2008).

³¹ *KindHearts*, 2009 U.S. Dist. LEXIS 80475, at *120-125; *Al Haramain*, 585 F. Supp. 2d at 1254-57.

³² See, e.g., *Holy Land Foundation for Relief and Development v. Ashcroft*, 333 F.3d 156, 164 (D.C. Cir. 2003).

³³ *National Council of Resistance to Iran v. Dept of State*, 251 F.3d 192, 209 (D.C. Cir. 2001). This report does not take a position on whether similar protections should extend to foreign organizations without a presence in the United States – either as a matter of due process, or as a matter of policy. Thus, based on current constitutional doctrine, our recommendations are limited to organizations or persons with a presence in the United States.

³⁴ We have no doubt that even under a narrowly tailored statute, Congress could designate Al Qaeda as a terrorist organization, in light of the fact that it is dedicated to violence against Americans and American interests.

³⁵ 18 U.S.C. § 2339A(a) (criminalizing aid to a long list of specific terrorist acts).

³⁶ Sheikh Omar Abdel Rahman, for example, was convicted of seditious conspiracy for his part in encouraging a plan to bomb various tunnels and bridges in New York City, even though he did not undertake any violent act himself. *United States v. Rahman*, 189 F.3d 88, 103-111 (2d Cir. 1999), cert. denied, 528 U.S. 1094 (2000).

³⁷ The Money Laundering Control Act makes it a crime, among other things, to transmit funds "with the intent to promote the carrying on of specified unlawful activity," including terrorism. 18 U.S.C. §1956(a)(2)(A). The USA PATRIOT Act added extensive new money laundering provisions designed to facilitate the investigation, prevention, and prosecution of money laundering related to terrorism. USA PATRIOT Act, Pub. L. No. 107-56, §§ 301-376, 115 Stat. 272 (codified as amended in scattered sections of 12, 15, 18, and 31 U.S.C.) (2001).

Racketeering Influenced and Corrupt Organizations Act, or RICO, permits the government to target ostensibly legitimate activities when they are a front for illegal conduct.³⁸ Thus, the constitutional protections of speech, association, and due process do not leave the government without tools for targeting the financing of terrorism. They simply require the government to target terrorist activity rather than political association.

RECOMMENDATIONS FOR REFORM

For these reasons, we, the undersigned members of the Constitution Project's Liberty and Security Committee recommend the following reforms:

1. Congress should amend the definition of "material support" to provide that pure speech may be punished only if it is intended to further illegal conduct.
2. Congress should amend 8 U.S.C. § 1189 to require the responsible federal agency to provide designated organizations that have a presence in the United States with notice of the charges and evidence against them in sufficient detail to ensure that they have a meaningful opportunity to respond to the charges against them. The procedures should provide appropriate protections for classified information.
3. Congress should amend IEEPA to require that entities subject to designation that have a presence in the United States be afforded notice of the charges and evidence against them in sufficient detail to have a meaningful opportunity to respond to the charges against them. The procedures should provide appropriate protections for classified information.
4. Congress should amend IEEPA to require, consistent with the Fourth Amendment, that the Treasury Department must obtain judicial authorization based on probable cause that an organization with a presence in the United States has violated IEEPA before freezing such an entity's assets. The statute should include an exception for cases where the government reasonably fears that the assets will be removed from the country unless the assets are immediately frozen, so that there is not sufficient time to obtain a warrant. Any such action should, however, be subject to a probable cause hearing shortly after the action is completed.
5. Congress should carefully craft an amendment to expand the category of support or resources exempt from the definition of material support beyond "medicine or religious materials" to also include such humanitarian aid items as medical services, civilian public health services, and, if provided to noncombatants, food, water, clothing, and shelter.
6. Amend IEEPA or the governing regulations to require that consistent with the Fourth Amendment, the Treasury Department must obtain advance judicial authorization based on probable cause, consistent with the Fourth Amendment, and must also provide timely judicial review, consistent with the Fifth Amendment, of any decision to freeze assets of an organization with a presence in the United States pending investigation. The amendment should also limit the time that such a freeze pending investigation may last.

³⁸ 18 U.S.C. §§ 1961-68. RICO prohibits the acquisition or maintenance of any enterprise through a pattern of racketeering, or with income derived from a pattern of racketeering. *Id.* § 1962. A wide range of terrorist activity and fundraising for terrorist activity is included within the definition of racketeering activity. *See id.* § 1961(1); *id.* § 2332b(g)(5).

These regulations should set out procedures for emergency orders similar to those under recommendation 4 above.

- 7.** Amend IEEPA or the governing regulations to require the Treasury Department to provide a statement of reasons to an affected entity with a presence in the United States upon subjecting it to a freeze pending investigation or a designation.
- 8.** Amend IEEPA or the governing regulations to authorize a court to permit an entity with a presence in the United States to expend its own funds for reasonable legal expenses in defense of any action taken to freeze its assets pending investigation or to designate it, including at the administrative level and in judicial review thereof.

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**RESPONSE OF MICHAEL GERMAN, POLICY COUNSEL
AMERICAN CIVIL LIBERTIES UNION
TO QUESTIONS FOR THE RECORD FROM
CONGRESSMAN KEITH ELLISON**

1) Should the Treasury Department consider implementing new rules and procedures to assist Muslims contributing to charities?

Yes, the Treasury Department should implement clear and precise rules and procedures that give charitable, philanthropic, and humanitarian organizations, their donors and the public at large detailed and specific information about how it determines whether it will name an individual or organization as a specially designated national.¹ Treasury should implement a procedure to ensure that charities it targets for designation receive ample notice of the allegations against them, and a fair opportunity to challenge the allegations or cure the alleged violations.

Further, in order to comply with its requirements under the Fourth and Fifth Amendments, as explained in the *KindHearts* decision, the Treasury Department must obtain a judicially-authorized warrant based upon probable cause before blocking assets, and must provide a due process procedure for charities to challenge such blocking before a neutral arbiter. Congress should not wait for the Treasury Department to adopt these steps voluntarily, but should instead mandate them through legislation. The Civil Asset Forfeiture Reform Act of 2000 provides a warrant and due process procedure that Treasury may use in the interim, until Congress acts.

Following these procedures would bring a higher level of transparency to Treasury's designation decisions, which would in turn give other charities, their donors and the public at large a better understanding of what conduct might result in sanctions. It is the vague and overbroad statutory scheme giving Treasury officials undue authority to select organizations for designation and to seize their assets without notice, probable cause, judicial oversight and due process that opens the door to discriminatory and arbitrary enforcement. Legislative reform of the material support statute and the International Emergency Economic Powers Act (IEEPA) to protect 4th and 5th Amendment rights is necessary to narrow Treasury's overbroad authority.

2) Do you support the Treasury directing the creation of a single, user friendly and publicly accessible database consolidating each of the government's lists so that donors, mosques and 501(c)(3)s can easily determine if a charity to which they wish to donate is on a prohibited list?

¹ OFAC created the *Anti-Terrorist Financing Guidelines: Voluntary Best Practices for U.S.-Based Charities* in 2006 to assist charities in protecting themselves from unintended diversion of charitable support to terrorist organizations. Both Muslim and non-Muslim charities, foundations and civil rights organizations (including the ACLU) have resoundingly criticized the Guidelines for imposing substantial and inefficient administrative burdens on nonprofit organizations with minimal success in uncovering terrorist diversion attempts, and have called for their withdrawal. Although the Guidelines state they are "voluntary," some charities and foundations have said they view them as de facto legal requirements because they fear that choosing not to follow them will invite government scrutiny. However, organizations and their donors are not assured that complying with the Guidelines will spare them government investigation or blocking orders.

If the government is going to hold individuals and organizations criminally liable and/or subject their assets to seizure for providing support to individuals and organizations it designates as specially designated nationals or foreign terrorist organizations, then it is certainly incumbent upon the government to have an up-to-date and user friendly version of such a blacklist publicly accessible. But a system that allows the government to create such a blacklist without probable cause and without due process procedures enabling an entity to contest its designation will inevitably produce a bloated and error-prone list.

The specially designated nationals and blocked persons (SDN) list, administered by the Treasury Department's Office of Foreign Assets Control (OFAC), is supposed to serve as a frequently updated, consolidated blacklist for 19 separate sanction programs under various Executive Orders. But simply looking at the SDN list makes it clear why the list creates more confusion than clarity. In the first place, different rules apply to different persons and organizations on the SDN list, depending on the terms of the Executive Order that created that portion of the list. For example, U.S. citizens or residents are prohibited from contributing even humanitarian aid to the organizations listed on the portion of the list attached to Executive Order 13224. Humanitarian aid is not prohibited, however, to organizations listed in other portions of the SDN list. The SDN list includes both individuals and organizations.

The SDN list, updated as of June 29, 2010, is currently 461 pages in length and includes thousands of names, many with aliases. The SDN list includes a number of extremely common names. For example, the list includes "Manuel Diaz," "Ali Khan," "Charles Taylor." Many other common names on the list such as "Michael P. Dooley," "Miguel A. Lopez," "Manuel Torres," and "Oscar Hernandez," do not even have dates of birth that would distinguish false positives from true identifications. When an organization is listed, there is often little or no information listed about the members of the organization.

Such a system creates an undue administrative burden for charitable, philanthropic and humanitarian organizations trying to bring needed aid into conflict areas and other crisis zones and creates unnecessary ambiguity for organizations trying to follow the law.

- 3) **Do you support Treasury providing a rebuttable presumption of innocence to donors (individuals, mosques and 501(c)(3)s) who can show that at the time of contribution, they checked the combined list and did not have reason to know that the organization was connected to terrorists or otherwise fraudulent?**

No individual donor should be subjected to criminal penalties or have his or her assets seized absent proof beyond a reasonable doubt that they specifically intended to engage in illegal activity. Congress should amend the material support statute to require specific intent to support the illegal activities of a designated entity.

- 4) **The Bush administration shut down 7 charities that served Muslims and prosecuted one. Do you have a view as to whether these steps were appropriate?**

The government has never presented enough information for the public to determine whether the designations of the six Muslim charities not criminally prosecuted were appropriate. Certainly the contention made at the hearing that the U.S. charities the Treasury Department designated represented the “most egregious cases” is contradicted by the fact that these charities were never charged with providing material support to designated individuals or terrorist organizations. The result, of course, is the implication of wrongdoing which the charities are powerless to overcome in the absence of an appropriate forum before a neutral arbiter.

Moreover, in the one case where a Muslim charity was prosecuted, the government did not allege the Holy Land Foundation intended to support terrorism or that its funds were actually used for that purpose. At trial the prosecutors admitted that all of the money in question went to charity. Instead HLF was charged with providing funds to charitable groups known as Zakat committees that delivered humanitarian aid in the West Bank and Gaza Strip. The Zakat committees were not themselves designated at the time HLF provided the funds, and they are not designated today, which only contributes to the chilling effect felt by Muslim donors.

- 5) **My understanding is that one of the charities, KindHearts, had its assets frozen in 2006, without a warrant and without probable cause. A federal judge ruled recently that this was improper. Could you please comment?**

Yes, KindHearts for Charitable Humanitarian Development, Inc. was established in 2002 - after the government shut down a number of Muslim charities - with the express purpose of providing humanitarian aid abroad and at home in the United States in full compliance with the law. KindHearts directed all of its employees to implement the Treasury Department’s Voluntary Guidelines for U.S.-Based Charities.

In February 2006 OFAC blocked all of KindHearts’ assets without a warrant, notice or a hearing, based simply on OFAC’s assertion that it was investigating whether the charity should be designated as a Specially Designated Global Terrorist (SDGT). KindHearts repeatedly asked OFAC for the reasons for the freeze and notice of the factual basis for OFAC’s actions. But beyond the general allegation that KindHearts was providing material support to Hamas, OFAC did not make specific charges. On May 25, 2007, OFAC informed KindHearts that it had “provisionally” decided to designate it as an SDGT. There is no specific authority in IEEPA for the government to “provisionally” designate an entity, and to this day, KindHearts has not been designated an SDGT, despite the government’s four year block against its assets.

With its May 25, 2007 letter, OFAC produced 35 documents that it identified as the “unclassified and non privileged documents” upon which it relied in provisionally deciding to designate KindHearts. Most of the documents did not even mention KindHearts, and concerned other entities instead. None of the documents explained the specific charges OFAC was considering against KindHearts, or why OFAC thought the evidence supported a potential designation. OFAC stated it “relied upon other classified and privileged documents obtained to date which are not authorized for disclosure...” Guessing at OFAC’s concerns, KindHearts submitted a 28 page

preliminary submission to OFAC, which included 1369 pages of evidence. OFAC never responded, and later claimed it misplaced KindHearts' submission.

In rulings issued on August 18, 2009 and May 10, 2010, Chief Judge James G. Carr of the U.S. District Court for the Northern District of Ohio, Western Division, held that OFAC's freeze pending investigation was a seizure under the Fourth Amendment, which required a judicially-authorized warrant based upon probable cause. Going forward, the administration must obtain a warrant based on probable cause before seizing an organization's assets. Further, Judge Carr called upon Congress to adopt "the appropriate structure" for establishing probable cause standards for freezes pending investigation under IEEPA, which would comply with the Fourth Amendment. Judge Carr also ruled that OFAC violated the Fifth Amendment's guarantee of due process by failing to provide KindHearts notice of the charges against it or a meaningful opportunity to respond. He held that OFAC may remedy these failures by declassifying or adequately summarizing the classified evidence against KindHearts or by allowing KindHearts' counsel to view the classified evidence pursuant to security clearances and a protective order.

Enforcing the procedural rights encompassed in the Fourth and Fifth Amendments will produce greater transparency in OFAC actions, and will better protect the religious, political and associational rights guaranteed under the First Amendment. The *KindHearts* decision gives Congress the opportunity to re-evaluate IEEPA in light of OFAC's secretive, arbitrary and discriminatory enforcement activities, which neither keep us safe nor protect American values.

- 6) Has the Obama administration applied the current rules to shut down any charities or freeze any charitable assets? Do you have any reason to believe that Treasury Department has changed its approach on this issue under the Obama administration?**

While the Obama administration has not designated any new charities as SDGTs the Department of Justice has continued to take the same legal positions as the Bush administration in regard to the breadth of its authorities under the material support statute and IEEPA in court arguments in *KindHearts* and in *Holder v. Humanitarian Law Project*.² The Treasury Department has also made clear in its testimony before the Subcommittee that it is not planning to change its approach to these cases.

- 7) Are these charitable organizations not entitled to due process of law? Perhaps the desire to act quickly and freeze assets is understandable, but shouldn't these organizations have an opportunity to be heard and be able to present evidence in their defense? What are the due process requirements?**

Yes, these charitable organizations are entitled to due process of law. In rulings issued on August 18, 2009 and May 10, 2010 in the *KindHearts* case, Chief Judge James G. Carr of the U.S. District Court for the Northern District of Ohio, Western Division, held that OFAC's freeze pending investigation was a seizure under the Fourth Amendment, which required a judicially-

² 561 U.S. (slip opinion at 11)(2010).

authorized warrant based upon probable cause. Going forward, the government must obtain a warrant based on probable cause before seizing an organization's assets. Further, Judge Carr called upon Congress to adopt "the appropriate structure" for establishing probable cause standards for freezes pending investigation under IEEPA, which would comply with the Fourth Amendment.

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8) Is charitable giving that seeks to fight poverty in Muslim-majority countries able to reach the people who need help? Or does federal law create a chilling effect on donations occur whereby American Muslims become less likely to donate?

The ACLU report "Blocking Faith, Freezing Charity" documents a pervasive fear among Muslim charitable donors that they may be arrested, prosecuted for material support for terrorism, interviewed by law enforcement, subpoenaed to testify in a criminal case, subjected to surveillance, deported or denied citizenship or a green card because of charitable donations required to fulfill their religious obligation to give Zakat.³ Other reports have suggested that Muslim charities have experienced a decrease in donations due to the government's closure of some Muslim charities.⁴

9) Please describe what precisely occurs procedurally and practically after assets of a charitable organization are frozen. Is there an appeal process?

The Treasury Department details the procedures it uses in a new FAQ released shortly after the hearing.⁵ In summary, the procedure involves the Treasury Department investigating an entity and determining, based on both public and non-public information, that there is a "reasonable

³ *Blocking Faith, Freezing Charity: Chilling Muslim Charitable Giving in the "War on Terrorism Financing,"* American Civil Liberties Union, (June 2009)[hereinafter, "Blocking Faith"], at: <http://www.aclu.org/human-rights/report-blocking-faith-freezing-charity>

⁴ Ian Wilhelm, *Muslim Charities Accuse Government of Harming their Fund Raising*, Chron. Philanthropy, Vol. 15 Issue 6, at 25 (2003); Caroline Preston, *Donations Trickle in to Charities Providing Middle East Aid*, Chron. Philanthropy, July 27, 2006; Alan Cooperman, *Muslim Charities Say Fear Is Dammning Flow of Money*, Wash. Post, Aug. 9, 2006, at A3; Audrey Hudson, *CAIR Concedes Membership Down; Blames U.S. for Linking It to Charity on Trial for Terrorist Ties*, Wash. Times, Aug. 22, 2007; Jeff Shields et al., *Islamic Charities Feeling the Pinch; Allegations of Terrorist Links, Frozen Assets Dry Up Contributions*, S. Fla. Sun-Sentinel, June 19, 2002, at 1A; Holly Kernan, *Donations to Muslim Charities Down Due to Increased Government Scrutiny* (Nat'l Pub. Radio broadcast, Dec. 1, 2001); Sara Harris, *U.S. Government Action to Seize Funds Allegedly Tied to Terrorists Has Also Affected Some American Muslim Charities* (Minnesota Public Radio broadcast, Dec. 26, 2001).

⁵ U.S. Department of the Treasury: Protecting Charitable Giving, Frequently Asked Questions, p. 3, June 4, 2010, at: <http://www.ustreas.gov/offices/enforcement/key-issues/protecting/docs/Treasury%20Charity%20FAQs%206-4-2010%20FINAL.pdf>

basis” for believing the entity provided “financial, material, or technological support for, or financial services to” or is “otherwise associated” with an SDGT, regardless of whether the entity actually intended to support the SDGT.⁶ After internal review within the Treasury Department and consultation with the State and Justice Departments, the Secretary of the Treasury may designate the entity, freezing its assets and making it a crime for any other entity to provide it support of any kind. The first an entity might know it is under investigation is when its assets are frozen. And while Treasury may then give the entity notice that it has been designated an SDGT, as we saw in the KindHearts case, that notice can be so general that it does not provide an adequate opportunity for the entity to understand, much less challenge, the accusations against it.

While Treasury claims the internal processes followed prior to designation are rigorous, the low standard of proof and lack of any independent review or adversarial due process leave significant room for error and abuse. Moreover, USA Patriot Act amendments to IEEPA allow the government to block or freeze an entity’s assets even without a designation, by simply opening an investigation into whether it should be designated.⁷ IEEPA does not specify any standard of suspicion necessary to order a “freeze pending investigation,” does not require notice or a meaningful opportunity to contest the allegations, or contain any time limit on the length of the investigation. No criminal charges ever need to be filed in order to effectively shut a charity down for good, and the charity need never be told what evidence or allegations led to its demise.

Once designated or frozen pending investigation an entity may write to Treasury to challenge the decision, but without specific accusations or the ability to see the evidence Treasury relies on, it is difficult for a designated entity to challenge the allegations. Moreover, as seen in the KindHearts case, Treasury can simply ignore letters challenging the designation. The fact that the entity’s assets are frozen also makes securing legal counsel problematic.

The Treasury Department FAQ correctly goes on to state that OFAC designations are subject to judicial review under the Administrative Procedures Act, but neglects to point out that the APA standard of review requires the court to find the agency acted in an “arbitrary and capricious” manner in order to overturn the designation.⁸ This highly deferential standard of review is difficult for a designated entity to meet, particularly because OFAC may present evidence *in camera* and *ex parte*, which denies the designated entity and its attorneys the opportunity to challenge the evidence against it.

⁶ See, Opinion and Order, *Al Haramain Islamic Found., Inc. v. U.S. Dep’t. of Treasury et al.*, No. 07-1155-K1 (D. Or. Nov. 6, 2008); and, Defs.’ Mot. to Dismiss at 24-25, *KindHearts for Charitable Humanitarian Dev. v. Geithner*, No. 3:08-CV-2400 (N.D. Ohio Dec. 12, 2008) “OFAC need not find that KindHearts intended to support terrorist activities, only that KindHearts engaged in affirmative conduct to provide financial support to entities that were funding Hamas.”

⁷ The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (PATRIOT Act) of 2001, Pub. L. No. 107-56, 115 Stat. 272.

⁸ 5 U.S.C. § 701 *et seq.* See also *Holy Land Found. For Relief and Dev. V. Ashcroft*, 333 F.3d. 156, 162 (D.C Cir. 2003),

“The district court correctly reviewed the actions of the Treasury Department under the highly deferential ‘arbitrary and capricious’ standard.”

10) Do we have any accurate data on what portion of terrorist financing comes from American charities?

No, we do not have accurate data on what portion of terrorist financing comes from American charities.



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QUESTIONS TO THE PANELISTS FROM CONGRESSMAN KEITH ELLISON

Anti-Money Laundering: Blocking Terrorist Financing and Its Impact on Lawful Charities

Hearing Before the Subcommittee on Oversight and Investigations, House Committee on
Financial Services

May 26, 2010

ANSWERS OF KAY GUINANE, Charity and Security Network

July 12, 2010

1. Should the Treasury Department consider implementing new rules and procedures to assist Muslims contributing to charities?

Answer: Yes.

All donors, whether they are individuals or institutions, would benefit from new rules and procedures. The current lack of clarity about the level of due diligence necessary to comply with the law creates unnecessary uncertainty for all donors. The ACLU has documented the disproportionate impact the current rules and procedures have on Muslim donors in its report *Blocking Faith Freezing Charity*.¹ Interviews of Muslim charity officials I conducted in the fall of 2009 confirmed the ACLU's findings. They told me Treasury officials said individual donors are responsible for conducting investigations into how their contributions are ultimately used, even when the contributions are made to U.S. based charities that have been recognized as tax-exempt by the Internal Revenue Service. Treasury also tells individual donors the same thing it tells institutional donors: no amount of due diligence or good faith investigation will provide any legal protection against government sanctions.

Individual donors should not be required to conduct the kind of thorough due diligence expected of grant makers or grant making organizations, so long as their donations are made to an entity recognized as a 501(c)(3) tax exempt organization by the U.S. Internal Revenue Service or a recognized equivalent under Treas. Reg. 53.4945-6(c)(2)(ii).

¹ Jennifer Turner, ACLU, June 16, 2009 online at <http://www.aclu.org/human-rights/report-blocking-faith-freezing-charity>

In addition, such rules should:

- Ensure that charitable giving, lawful at the time of contribution, is not retroactively penalized.
- Assure donors that if their donations are blocked, seized, or otherwise placed under government control the funds shall only be used towards charitable purposes in accordance with the donors' intent and the mission stated in the organization's charter.
- Protect the privacy of donations, so that personal information is not added to law enforcement or intelligence databases solely on the basis of lawful charitable giving.
- Affirmatively state that government scrutiny of donors is not based, solely or partially, on race, ethnic origin, gender, religion, or protected First Amendment activity.
- Not impute the intent of a donor from the acts, words, or intentions of others.

2. Do you support Treasury directing the creation of a single, user-friendly and publicly accessible database consolidating each of the government's prohibited lists so that donors, mosques and 501(c)(3)s can easily determine if a charity to which they wish to donate is on a prohibited list?

Answer: Only if the integrity of the lists is assured through clear standards for listing and adequate redress procedures for those placed on the lists. As long as the procedures for listing and de-listing remain flawed, making list checking easier only perpetuates the flaws. Because U.S. anti-terrorist programs rely so heavily on lists, and because the penalties for engaging in transactions with listed persons or entities are severe, it is incumbent on the enforcement agencies involved to ensure the integrity of the lists by implementing clear standards and adequate redress procedures.

The Treasury Specially Designated Nationals (SDN) list purports to be a single, comprehensive list,² but it is far from user friendly. It is online in pdf format³ or in a text file.⁴ The listings are alphabetical and the files are not searchable.

² The Treasury Department's website says the SDN list is "an integrated and comprehensive list of designated parties with whom U.S. persons are prohibited from providing services or conducting transactions and whose assets are blocked. The names on this list include persons designated under country-based and list-based economic sanctions programs, as well as individuals and entities designated under the various executive orders and statutes aimed at terrorism. Persons designated under E.O. 13224, E.O. 12947, or the AEDPA are included on this integrated and comprehensive list and are called "Specially Designated Global Terrorists" or "SDGTs", "Specially Designated Terrorists" or "SDTs", or "Foreign Terrorist Organizations" or "FTOs", respectively."

³ http://www.ustreas.gov/offices/enforcement/key-issues/protecting/charities_exec-orders.shtml

⁴ <http://www.treas.gov/offices/enforcement/ofac/sdn/t11sdn.pdf>

⁴ <http://www.treas.gov/offices/enforcement/ofac/sdn/sdnlist.txt>

A small software industry has grown up around these lists, and special software that costs \$500 to \$1,000 per year is commonly used due to the difficulty and inefficiency of searching the government lists.⁵ Although many nonprofits have expressed skepticism about the effectiveness of the lists in thwarting terrorism and have concerns about the constitutionality of the process, list checking is often seen as the easiest way to comply with the law; 69 percent of respondents in a Grantmakers Without Borders survey engaged in list checking.⁶ That survey also found that none of the organizations surveyed encountered a true hit when list-checking. Instead, false positives used up time and resources investigating a potential match. This is largely due to the extensive inclusion of common Muslim or Latino names on the SDN list.⁷

Treasury and other U.S. government agencies should prioritize their resources, and rather than spend taxpayer dollars on making flawed lists easier to use, they should concentrate their energies, attention and resources on fixing the listing and de-listing process. Then making the lists easier to use could be a useful and productive step for them to take.

3. Do you support Treasury providing a rebuttable presumption of innocence to donors (individuals, mosques and 501(c)(3)s) who can show that at the time of contribution, they checked the combined list and did not have reason to know that the organization was connected to terrorists or otherwise fraudulent?

Answer: This proposed protection does not go far enough. Since the prohibitions are based on the lists, donors should not be subject to sanctions or criminal charges for giving to a group that was not on the list as of the date of the contribution.

In other words, this should be an affirmative defense, and not a rebuttable presumption. It is difficult to imagine how the government could rebut a presumption of good faith without relying on religious identity, political opinion or association or other First Amendment protected factors.

More reasonable and proportional sanctions for donors who may make errors would also help solve the problems donors currently face. Under current rules the sanctions for making a small, inadvertent donation may be same as for being a terrorist.

The government has undermined the integrity of the lists through its failure to make all suspect groups publicly known. This dilemma came to light in the criminal prosecution of Holy Land Foundation and its leaders, where the prosecution argued that although the zakat committees Holy Land gave to were not designated organizations, the defendants "should have known" they

⁵ <http://www.mott.org/toolbox/resources/patriotact/resources.aspx>

⁶ Most check both their international grantees and their U.S.-based grantees against the Terrorist Exclusion List maintained by the Secretary of State and the SDGT list maintained by the Office of Foreign Assets Control.

⁷ "The OFAC list *How a Treasury Department Terrorist Watchlist Ensnarers Everyday Consumers*," The Lawyers' Committee for Civil Rights of the San Francisco Bay Area (March 2007)
<http://www.lccr.com/03%202007%20OFAC%20Report.pdf>.

were "otherwise associated" with Hamas.⁸ Treasury confirmed that they do not list all suspect groups in the testimony of Robert McBrien, an official of the Office of Foreign Assets Control (OFAC). He said keeping up with front groups "is a task beyond the wise use of resources." As a result it is impossible for donors to know whether a charity is on Treasury's "secret list."

The standard in the law is that a donor cannot give to a group he or she knows is on the SDN list. Donors should not be held accountable for giving to groups on secret lists, or for Treasury's inability to do its job by putting groups it has found to be supporters of terrorism on the list.

4. The Bush administration shut down 7 charities that served Muslims and prosecuted one. Do you have a view as to whether these steps were appropriate?

Answer: There is insufficient public information for me to assess whether these designations were appropriate. However, the process used to shut charities down, coupled with the lack of meaningful appeal procedures, raises questions about whether it was necessary or appropriate to do so. Without the transparency or accountability provided by adequate due process, the current process used to designate charities lacks public credibility.

What is known about some of the evidence is cause for concern. Criminal trials have required the government to disclose its evidence, providing the general public a glimpse of the kind of evidence Treasury considers when shutting down a charity. This evidence has often been of poor quality, based on substandard intelligence or faulty translations.

The evidence used to designate the Holy Land Foundation is a case in point. In July 2004, Holy Land asked the Department of Justice Inspector General to investigate allegations that the Federal Bureau of Investigation (FBI) used erroneous translations of sensitive Israeli intelligence material as the crux of its designation.⁹ Instead of launching an investigation, the Justice Department indicted Holy Land and its top officials.¹⁰

A June 2006 article in the *Los Angeles Times*¹¹ revealed details of these translation discrepancies. It said the prosecution argued that many of the orphans supported by Holy Land were children of suicide bombers, citing an "orphans book" seized from Holy Land's office. The *Los Angeles Times* review of this document identified 69 of 400 orphans in the book labeled as children of "martyrs." Noting that the term "martyr" is used broadly to include "common accidents and incidents," the article quoted a sworn statement by the former head of Holy Land's Gaza office, who said social workers interviewed all 69 families and found only 4 had immediate family

⁸ Greg Krikorian, "Mistrial in Holy Land terrorism financing case", *Los Angeles Times* (Oct. 23, 2007).

⁹ Eric Lichtblau, "Islamic Charity Says FBI Falsified Evidence Against It", *New York Times* July 27, 2004).

Available at

http://query.nytimes.com/gst/fullpage.html?res=9F0CE6D6153DF934A15754C0A9629C8B63&sec=&spon=&page_wanted=all.

¹⁰ Indictment available online at http://freedomtogive.com/files/HLF_indmt.pdf.

¹¹ Greg Krikorian, "Questions Arise in Case Over Islamic Charity," *Los Angeles Times* (June 18, 2006).

members that died from making bombs. Of the remaining 65 orphans, 12 lost family members to Israeli troops, 8 were killed by Palestinians for allegedly collaborating with Israel, and the remaining 45 were victims of robberies, heart attacks, accidents, and other non-political deaths."

Defense motions filed in February revealed significant discrepancies between transcripts of a 1996 FBI-wiretapped conversation and the official summary: anti-Semitic remarks attributed to Holy Land executive director Shukri Abu Baker in the summary were not in the actual transcripts.

The government was unable to prove support for terrorism when it prosecuted Benevolence International Foundation (BIF). In January 2002 BIF filed suit¹² to contest its designation. In April 2002, the government charged BIF and its executive director with making false statements in their appeal by denying association with al-Qaeda. In February 2003 Judge Suzanne B. Conlon dismissed the charges against BIF,¹³ ruling that the prosecution had "failed to connect the dots" to prove a relationship between BIF, its staff and bin Laden.

To provide further background about concerns on these designations, I have attached a March 2006 report I wrote for OMB Watch: *Muslim Charities and the War on Terror: Top Concerns and Status Update*.

5. My understanding is that one of the charities, KindHearts, had its assets frozen in 2006 without a warrant and without probable cause. A federal judge ruled recently that this was improper. Could you please comment?

Answer: Judge James Carr of the Federal District Court for the Northern District of Ohio, in a 100 page opinion, set out the constitutional basis for requiring a warrant based on probable cause before a charity's funds can be seized (frozen) by Treasury. In doing so he brought the economic embargo sanctions scheme, originally intended to be directed at nation states, into a framework that can be constitutionally applied to U.S. citizens and organizations.

Treasury's sanctions powers are based on Executive Order 13224, which draws its authority from the International Emergency Economic Powers Act (IEEPA). The law was written to authorize the executive branch to impose sanctions against foreign nations, and the asset blocking powers were intended to create negotiating leverage in the conduct of U.S. foreign policy.

¹² *Benevolence Int'l Found., Inc. v. Ashcroft*, 200 F. Supp. 2d 935 (N.D. Ill. 2002).

¹³ Arnaout pleaded guilty to a lesser charge of fraud, admitting that he led BIF donors to believe funds were being used for humanitarian purposes, but that some funds were diverted to Chechen and Bosnian soldiers. He is currently serving an 11-year sentence. This outcome – holding individual bad actors responsible – makes more sense than punishing the entire organization.

This statutory scheme was expanded to apply to non-state terrorist organizations and individuals interfering with the Middle East peace process during the Clinton administration in Executive Order 12947 and further expanded in Executive Order 13224 to apply to Specially Designated Global Terrorists.

Once they are shut down, U.S. charities have no leverage for negotiating with the government for release of their assets. Judge Carr recognized that designation and asset blocking "has effectively shut KindHearts down." He said "nothing in our Fourth Amendment jurisprudence or constitutional tradition supports complete elimination of the probable cause, prior judicial review and warrant requirements."

On May 10, 2010 Judge Carr ordered new proceedings for the government to seek the probable cause warrant. However, this remedy only applies to the KindHearts case. Carr said "I leave to Congress 'the responsibility for considering and adopting the appropriate structure' for pre-blocking warrant and probable cause standards that would comply with the Fourth Amendment... Here, however, I am not delineating pre-seizure requirements; I am, rather, constructing a remedy for the constitutional violation in this case." [p. 16 fn 7]

6. Has the Obama administration applied the current rules to shut down charities or freeze any charitable assets? Do you have any reason to believe that the Treasury Department has changed its approach on this issue under the Obama administration?

Answer: After President Obama took office, on Feb. 9, 2009 the Treasury Department shut down the Maryland-based Tamil Foundation as a supporter of the Liberation Tigers of Tamil Eelam (LTTE).¹⁴ That is the only charity designation, either U.S. or foreign, that I could find on the Treasury website that occurred after President Obama took office. It was deemed to be an affiliate of the Tamil Rehabilitation Organization, which was shut down in 2008.

The Department of Treasury has not changed its approach to charities since Obama took office. The same officials that developed and implemented policy under President Bush continue to do so. Despite promises of dialog from Assistant Secretary for Terrorist Financing David S. Cohen made in a July 2009 meeting, Treasury has been unwilling to discuss our proposals relating to frozen funds, due process or clear standards for designation.

Treasury officials have also made it clear they will continue to promote their *Anti-Terrorist Financing Guidelines*, despite the fact that the U.S. nonprofit sector has made it clear the Guidelines do more harm than good. In a recent letter to the Treasury Guidelines Working Group Chip Poncy, head of the Office of Terrorism and Financial Intelligence, indicated that Treasury

¹⁴ Treasury announcement at <http://www.ustreas.gov/press/releases/tg22.htm>

is working on a new version of the Guidelines aimed at high risk areas. His letter lists Muslim majority countries as examples of high risk areas.

While it is helpful that Treasury recognizes problems their enforcement policies create for legitimate charities, the agency has been indifferent to "collateral damage" it causes, telling us the solution to that problem lies with Congress.

Treasury officials also continue to make sweeping statements about the role of charities and the dangers of being exploited by terrorists, failing to acknowledge the difference between highly regulated U.S. charities and less regulated charities in some other parts of the world. Treasury also fails to acknowledge the serious issues at hand by claiming it is all just a misunderstanding that can be cleared up with more outreach. However, *further explanation of flawed policies will not undo the flaws.*

For example, Treasury's proposal for what it calls "alternative delivery mechanisms" as demonstrated in a pilot program it carried out with USAID and a specially created group, American Charities for Palestine, has serious flaws, but Treasury continues to promote it despite objections from the U.S. charitable sector.

This model essentially requires a private charity to funnel contributions from private citizens through USAID. This structure violates the principles of independence of the nonprofit sector, subjects all individuals associated with a charitable project to having their personal information entered into U.S. intelligence databases and ignores due diligence based on on-the-ground investigations and assessments. It is too fundamentally flawed to ever become a widespread solution to the problems charities and government confront when aid is needed in conflict zones

The "alternative delivery mechanism" incorrectly assumes there are no conditions under which the U.S. charitable sector can provide aid and development in conflict zones without supporting terrorism, either directly or indirectly. This ignores a host of due diligence efforts that go much further than the government's computer-based data searches.

- 7. Are these charitable organizations not entitled to due process of law? Perhaps the desire to act quickly and freeze assets is understandable, but shouldn't these organizations have an opportunity to be heard and be able to present evidence in their defense? What are the due process requirements?**

Answer: U.S. charitable organizations are constitutionally entitled to due process of law, but current Treasury rules and enforcement policies deny them these rights. The only current "due process" requirement is that a charity can write a letter to Treasury asking it to reconsider its

decision.¹⁵ There is limited access to funds to pay for legal defense or to learn about the evidence it must rebut. Appeals to federal court involve only limited review. For example, in 2007 in the case of the Islamic American Relief Agency (IARA-USA) the U.S. Court of Appeals for the District of Columbia upheld the designation, saying that "[w]e may not substitute our judgment for OFAC's."¹⁶

When the government needs to act quickly to prevent assets that may be subject to IEEPA sanctions from being transferred outside the jurisdiction of the U.S. government, it has a wide array of tools it can use. It is not necessary to freeze charitable funds indefinitely. For example, a trustee could be appointed to take control of the funds and make sure they are only spend on legitimate activities and are not transferred outside the U.S. The United Kingdom's Charity Commission uses such a system.

An example of overuse of the most drastic remedy can be seen in the case of the IARA-USA. The group's attorney made repeated requests over a two-year period for release of funds for humanitarian and disaster aid, including assistance for victims of Hurricane Katrina. These requests included offers to change their governance structure, financial accounting, and personnel. In a Feb. 7, 2005, letter from its attorney, Shereef Akeel, IARA-USA, said, "This organization would even consider some sort of reasonable monitoring program imposed by the government..." Instead of helping IARA-USA restructure in a manner that would comply with the law and allow people in need to receive the benefit of its services, Treasury denied the request.

8. Is charitable giving that seeks to fight poverty in Muslim-majority countries able to reach the people who need help? Or does federal law create a chilling effect on donations occur where by American Muslims become less likely to donate?

Answer: Charities are having great difficulties delivering aid to people in need in many Muslim majority countries. The problem goes well beyond the reduced donations caused by the chill on U.S. Muslim donors to include operational barriers that disproportionately impact Muslim populations.

These operational problems include the inefficient and obscure licensing processes at Treasury and Commerce Departments, the chilling impact of Treasury's enforcement actions against charities, the lack of an adequate humanitarian exemption to the definition of material support of terrorism, long delays by banks in making financial transactions and more.

¹⁵ 31 CFR 501.807

¹⁶ *Islamic American Relief Agency (IARA-USA) v. Gonzales*, (D.C. Cir. Feb. 13, 2007). Available at <http://pacer.cadc.uscourts.gov/docs/common/opinions/200702/05-5447a.pdf>.

For example, at a May 12, 2010 panel discussion sponsored by the Muslim Public Affairs Council and the Charity and Security Network, Ellen Willmott, Deputy General Counsel of Save the Children, described problems her organization has had providing psychological services to children in Gaza. Because Hamas controls the Education Ministry, Save the Children cannot provide services to children in the public schools. In addition, she said the group was unable to dig a well for a village in Somalia because someone from al Shabaab might come along and get a drink of water.

9. Please describe what precisely occurs procedurally and practically after assets of a charitable organization are frozen. Is there an appeal process?

Answer: Most of the process following designation of U.S. charities has involved correspondence between Treasury and the charity's legal representative after Treasury has been asked to reconsider its decision. The next stage in the process is appeal to federal district court.

The best description of the details of this process are found in the Aug. 18, 2009 federal court ruling in *KindHearts for Charitable and Humanitarian Development, Inc. v. Timothy Geithner, et al, Case No. 3:08CV2400*. The judge ruled that Treasury's seizure of KindHeart's assets without notice or means of appeal is a violation of the Fourth and Fifth Amendments. KindHearts was shut down by the Treasury Department "pending investigation" on Feb. 19, 2006. To date it has not been designated as a supporter of terrorism. The timeline below is based on information in the court ruling. It details the issues and procedural history of the case.

Note: Page numbers for quotes refer to text of the court's opinion. OFAC refers to Treasury's Office of Foreign Assets Control.

From Freezing Assets "Pending Investigation" to "Provisional Determination"

1/22/2002	KindHearts for Charitable Humanitarian Development incorporated in Todedo, Ohio with the goal of providing humanitarian aid without regard to religion or political affiliation.
2002 to 2006	KindHearts seeks guidance from Treasury and implements Treasury's <i>Anti-Terrorist Financing Voluntary Guidelines</i> .
Jan-Feb 2006	Department of Justice serves grand jury subpoenas on KindHearts board members and accountants Ernst and Young, requiring them to produce all records relating to KindHearts from January 2002 to Feb. 17, 2006.
2/19/2006	OFAC freezes about \$1 million in KindHearts assets and executes search warrant seizing all records, computers, equipment, publications from headquarters and residence of President Khaled Smaili
2/19/2006	OFAC sends "blocking notice" to KindHearts stating: 1.) all property blocked "pending investigation into whether KindHearts is subject to designation pursuant to Executive Order 13224 "for being controlled by, acting for or on b

	<p>half of, assisting in or providing financial or material support to, and/or otherwise being associated with Hamas."</p> <p>2.) no prior notice provided because OFAC determined assets could be transferred, making block/freeze ineffectual, and</p> <p>3.) KindHearts could challenge action by sending a letter stating its position and providing evidence to the Director of OFAC</p>
2/19/2006	OFAC releases a press release [3] with more specific information than blocking notice. Alleges "that KindHearts' officials and fundraisers had 'coordinated with Hamas leaders and made contributions to Hamas-affiliated organizations' including such organizations in the West Bank and Lebanon. The press release asserted that KindHearts was founded to replace the Hamas-affiliated Holy Land Foundation for Relief and Development [HLF] and the al-Qaida-affiliated Global Relief Foundations [GRF]." [p. 7]
4/2006	KindHearts' attorney sends letter to OFAC opposing freezing assets, " but OFAC failed to respond to it. " [p. 7]
11/29/2006	KindHearts' attorney requests copy of OFAC administrative record in the case, but " It received no response. " [p. 7]
5/27/2007	<p>OFAC notifies KindHearts that it had made a "provisional determination" that KindHearts is a Specially Designated Global Terrorist, and "for the first time acknowledged receiving KindHearts' challenge to the block pending investigation." [p. 8] There is no provision for a "provisional determination" in IEEPA or Treasury regulations.</p> <p>The notice also included 35 unclassified documents OFAC relied on. It indicated classified and privileged information was also used and provided a three page summary of the classified evidence.</p> <p>The OFAC letter "provided no explanation of the specific charges it was considering against KindHearts or why it thought the evidence supported a potential designation." [p. 8] However, it said KindHearts could present additional information before a final determination and that OFAC would forward any new, non-classified information for KindHearts' response.</p>

KindHearts' Ongoing Attempted Defense at OFAC

2/2006 to 2/2008	OFAC denies license to allow KindHearts to use blocked funds to pay its attorneys.
6/14/2007	KindHearts requests access to its own records, now held by OFAC and the Department of Justice. It also seeks access to the full classified record used by OFAC.
6/25/2007	KindHearts sends OFAC a 28 page submission "in which KindHearts attempted to, in its words, 'guess at and address OFAC's concerns.' It attached to that a 1369-page submission of supporting evidence. OFAC never responded to this submission. " [p. 9]
6/27/2007	KindHearts asks OFAC for declassification review of evidence used in blocking notice.

8/10/2007	OFAC agrees to conduct declassification review and says it will give KindHearts 30 days to respond once material is provided. Did not specify when review would be completed.
8/13/2007	KindHearts requests "further clarification of charges against it and an extension of time until forty-five days after the completion of the declassification review. KindHearts stated it needed the extension to receive meaningful process." [p. 10]
8/14/2007	OFAC denies KindHearts request for access to its own documents , saying U.S. Attorney's Office (prosecutors) has most of them.
Ongoing	"OFAC claims it 'misplaced' the June 25, 2007, submission. It does not, however, state what constituted 'misplacing,' how it happened, or may have happened, or when, if ever, and how it located the submission." [p. 9, fn 4]
4/2008	U.S. Attorney's Office "provided KindHearts with an electronic copy of a subset of the seized documents, but did so subject to stringent conditions. Under a protective order, KindHearts members and officers could not view the documents without court approval, and KindHearts counsel could not print or electronically copy and documents." [p. 9, fn 3]
8/16/2007	OFAC tells KindHearts it may contact employees in preparing a defense, but any documents discovered are blocked property that cannot be used without a license from OFAC and counsel must give OFAC identifying information about it. KindHearts' counsel objects in letters in October and December, 2007.
12/26/2007	OFAC approves license "allowing KindHearts counsel to receive copies of blocked documents necessary for them to provide legal services to KindHearts." [p. 11]
6/2008	OFAC changes policy on attorneys fees after constitutional challenge in another case, allowing KindHearts to use a limited amount of frozen funds to pay for legal fees.

KindHearts' Federal Court Challenge

10/9/2008	KindHearts files a complaint in Federal District Court in Ohio seeking a temporary restraining order and preliminary injunction against Treasury final designation and continued enforcement of the blocking order. It subsequently moves for summary judgment on its constitutional claims under the Fourth and Fifth Amendments.
10/9/2008	Judge James Carr issues order barring Treasury and OFAC from designating KindHearts without providing basic due process.
12/2008	OFAC provides KindHearts with declassified version of its blocking and provisional determination memos.
1/2009	OFAC declassifies additional material in blocking memo.
1/30/2009	Judge Carr issues a protective order requiring that "The government shall forthwith commence producing copies at its expense of all seized materials to counsel of record for KindHearts, and as well, as provided herein, to such representatives of KindHearts as counsel shall designate;"
2/27/2009	Ten nonprofits file friend of the court brief supporting due process for KindHearts.
8/18/2009	Judge Carr rules that OFAC and Treasury violated KindHearts rights by seizing its assets without sufficient notice or means of appeal, in violation of the Fourth and Fifth

	Amendments.
10/26/2009	U.S. District Court Judge James G. Carr issued a temporary restraining order against Treasury barring further action against KindHearts. The court said the action is necessary for it to consider a remedy to the constitutional violations against KindHearts, as found in its August 2009 ruling [11]. It ordered the parties to submit briefs on the remedy issue by Jan. 11, 2010.
5/10/2010	Judge Carr orders a post-seizure probable cause review by the court. To address due process issues he ordered: 1.) an <i>ex parte, in camera</i> meeting with the government to determine what classified evidence will give KindHearts adequate notice, and whether that evidence is capable of further declassification or adequate summarization. In the case where summarization of the classified material is insufficient or impossible, then KindHearts' counsel will be able to review the documents under a security clearance, but will not be able to discuss them with KindHearts. 2.) KindHearts must then be given a meaningful opportunity to respond to the allegations. If classified documents are at issue, the hearing will be closed.

10. Do we have any accurate data on what portion of terrorist financing comes from American charities?

Answer: There is not sufficient public data for me to answer this question. However, using the limited information from Treasury that is available we conducted an analysis that shows that charities do not make up a significant portion of designated terrorist groups or provide significant funds to terrorists. The results are shown in the tables below:

Table 1: Charities & Individuals Associated with Charities on OFAC's 2006 SDN List

Charities & Individuals Associated With Charities (72, including 43 charities & 29 individuals)	15%
All Charities (43 listed on OFAC list)	8.95%
Individuals Associated With Charities (29 listed on OFAC list)	6.04%
Foreign Charities (37 listed on OFAC list)	7.70%
U.S. Based Charities (6 listed on OFAC list)	1.25%

(Of approximately 480 entities listed on the 2006 OFAC list)

Table 2: Charities & Individuals Associated with Charities on OFAC's 2009 SDN List

Charities & Individuals Associated With Charities (77, including 48 charities & 29 individuals)	10.69%
All Charities (48 listed on OFAC list)	9.0%
Individuals Associated With Charities (29 listed on OFAC list- no updated data available)	5.4%
Foreign Charities (39 listed on OFAC list)	7.3%
U.S. Based Charities (9 listed on OFAC list)*	1.68%

(Of approximately 530 entities listed on the September 2009 OFAC list)

*This includes KindHearts for Charitable Humanitarian Development, which has not be designated as an SDGT but its assets were frozen in February 2006.

Terror Assets report 2009

Table 3: Percent of Frozen Assets

OFAC List Category	Reported Blocked Assets	% of Known Blocked Assets
Foreign Terrorist Organizations (including charitable organizations)**	\$19,886,207	7%
Five State Sponsors of Terrorism	\$280,000,000	93%
Total	\$299,886,207	100%

**There is no publicly available information on how much of this amount includes charitable funds, or as a subset, how much includes funds of U.S. charities.

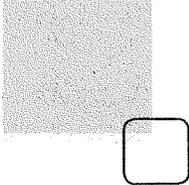


Muslim Charities and the War on Terror

Top Ten Concerns and Status Update

Revised March 2006





Since the 9/11 terrorist attacks, U.S.-based charities have become targets in the government's war on terror financing. This development makes little sense. U.S. charities support efforts to stop the violence of terrorism, and financing terror is contrary to the sector's mission of promoting the public good, providing humanitarian relief, protecting human rights and assisting with conflict resolution around the world. Despite the sweeping implications for all domestic nonprofit organizations, the lion's share of the burden of increased scrutiny, suspicion, and pre-emptive action has fallen on Muslim groups. This imbalanced campaign raises significant legal and ethical questions.

This paper lists issues that the charitable sector and the public must address in order to correct an unfair process and make the war on terror most effective. Part 1 lists our top ten concerns about the way the war on terror has impacted U.S. Muslim charities, and Part 2 provides an update on charities that have been shut down by the Treasury Department or made the target of official investigations.

Kay Guinane, Counsel for the Nonprofit Advocacy Project, directed the research, writing, and production of this project. She was assisted by Amanda Horwitz. Anna Oman designed the report.

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Part 1: OMB Watch's Top Ten Concerns About the Treatment of Muslim Charities in the War on Terror

1. Drastic sanctions in anti-terrorist financing laws are being used to shut down entire organizations, resulting in the loss of badly needed humanitarian assistance around the world and creating a climate of fear in the nonprofit sector.
2. Despite sweeping post-9/11 investigative powers, authorities have failed to produce significant evidence of terror financing by U.S.-based charities.
3. Questionable evidence has been used to shut down the largest U.S.-based Muslim charities.
4. Anti-terrorist financing policies deny charities fundamental due process.
5. There are no safe harbor procedures to protect charities acting in good faith or to eliminate the risk of giving to Muslim charities or charitable programs working with Muslim populations.
6. Government action has created the perception of ethnic profiling and negatively impacted Muslim giving.
7. Organizations and individuals suspected of supporting terrorism are guilty until proven innocent.
8. Charitable funds have been withheld from people in need of assistance and diverted to help pay judgments in unrelated lawsuits, violating the intentions of innocent Muslim donors.
9. There is unequal enforcement of anti-terrorist financing laws.
10. Treatment of Muslim charities hurts, not helps, the war on terrorism.

1. Drastic sanctions in anti-terrorist financing laws are being used to shut down entire organizations, resulting in loss of badly needed humanitarian assistance around the world and creating a climate of fear in the nonprofit sector.

The USA PATRIOT Act gives the executive branch largely unchecked power to designate any group as a terrorist organization. Once designated as a supporter of terrorism, all of a group's materials and property may be seized and its assets frozen. These same steps

may be taken "pending an investigation." Criminal charges need not ever be filed in connection with this action. Instead, action is taken through the Treasury Department's Office of Foreign Assets Control (OFAC).

Once all assets are seized and frozen, an organization may be denied access to evidence (the organization's computers, files, documents, etc.) that might prove its innocence. Even if these materials were available, there is no forum where an affected charity can present evidence on its own behalf

or challenge evidence against it. Indeed, appealing Treasury actions to the federal courts is relatively useless, as the court's scope of review is very limited.

Although all charities need to be concerned about the potential for abuse of these powers, to date the impact has mostly been felt by Muslim charities. All five U.S.-based charities shut down by OFAC were led by Muslims and primarily served Muslim communities in the U.S. and abroad.

2. Despite sweeping post-9/11 investigatory powers, authorities have failed to produce significant evidence of terror financing by U.S.-based charities.

Although dozens of charitable groups have been investigated, only one official criminal charge has been brought against a Muslim organization for support of terrorism, and that case has not yet made it to trial. A report released in August 2004 by the 9/11 Commission raised "substantial civil liberty concerns" regarding the government's shutdown of two Chicago-area Islamic charities, the Global Relief Foundation (GRF) and the Benevolence International Foundation (BIF). "Indeed," the report points out, "despite unprecedented access to the U.S. and foreign records of these organizations, one of the world's most experienced and best terrorist prosecutors has not been able to make any criminal case against GRF and resolved the investigation of BIF without a conviction for support of terrorism."

This finding calls into question the government's claims of success in fighting terrorism through such mechanisms and highlights the continued infringements on civil liberties in the name of the war on terror. Since 2001, federal authorities have designated 41 charities worldwide, including five US-based charities, supporters of terrorism, freezing their assets and arresting or deporting staff members. The five U.S.-based organizations were led by Muslims and focused on providing relief to people in areas of international conflict. Not one of these groups or their staff members has been convicted of any terrorism-related crime, and none of the groups has had a day in court where they could challenge the evidence against them or present to a judge evidence on their own behalf.

The government has also failed to substantiate its claim that U.S.-based charities are a significant source of terror financing, and thus appropriate "targets" for new anti-terror financing policy. In a 2004 report, *Terrorism and Money Laundering: Illegal Purposes and Activities*, Jennifer Reynoso, Victoria Bjorklund and Abbey Hazlett of the law firm Simpson, Thacher & Bartlett, LLP reviewed publicly available information on charities that had been shut down by the Treasury to determine what the problem is and how diversion of funding to terrorists may have occurred. Their extensive documentation led them to conclude:

- Diversion of funding to terrorism is most likely to occur when an individual acts out of ideological and criminal motivation, in some cases

using charities for these purposes, rather than as a deliberate act by the charity itself.

- None of the cases involved diversion of funds by a U.S.-based grant maker to a foreign organization "where the diversion would have been uncovered but for the lack of appropriate due diligence..."

- Evidence of "links" to terrorist organizations had not resulted in criminal convictions.

3. Questionable evidence has been used to shut down the largest U.S.-based Muslim charities.

Federal action in cases involving the three largest U.S.-based Muslim charities appears to be based on questionable evidence. In December 2001, the Federal Bureau of Investigation (FBI) raided the Texas office of the Holy Land Foundation for Relief and Development (HLF), seizing more than \$5 million in assets, along with all organizational documents and property. OFAC alleged that HLF funneled millions of dollars to Hamas, which was designated a terrorist organization in 1995 and provided funds to families of suicide bombers. HLF denied the charge, saying it only provided humanitarian relief, with a focus on Palestinian refugees and victims of armed conflict in Bosnia, Kosovo, and Turkey.

When the criminal indictment against HLF was released nearly three years later in July 2004, questions immediately arose regarding the basis of evidence used to shut down the organization. HLF sent a letter to the Department of Justice Inspector General requesting an

investigation into the FBI's handling of the case, alleging "materially misleading" evidence. HLF said the FBI used a "distorted" and erroneous translation of sensitive Israeli intelligence material as the crux of its case. An independent translating service in Oregon, hired by the HLF to review the evidence, cited 67 discrepancies or errors in translation in a four-page FBI document used in the case. Yet the Inspector General declined to investigate the HLF accusations, saying the issue of the false translations could be fully aired in the criminal case. John Boyd, attorney for HLF, says "there is no guarantee that the jury will ever have the opportunity to hear that the allegations against HLF are founded on falsified translations." (Interview, Dec. 20, 2005).

"It's open season on American Muslims in this country," Shkri Ab Baker, former chief executive of the Holy Land Foundation, told *The New York Times* in July 2004.

In 2001 authorities also closed the Global Relief Foundation (GRF) and Benevolence International Foundation (BIF) without disclosing any official finding that they were aiding terrorist organizations. Both had been under FBI scrutiny for years because of apparent ties to terrorist organizations. The independent commission to investigate the 9/11 attacks found that these concerns were "not baseless," but went on to explain, "Despite these troubling links, the investigations of BIF and GRF revealed little compelling evidence that either of these charities actually provided financial support to al Qaeda - at least after al Qaeda

was designated a foreign terrorist organization in 1999.”

The report concludes that one of the fundamental issues raised by the government’s new approach to combating terror financing is “the problem of defining the threshold of information necessary to take disruptive action.” One of the most troubling aspects of the war on terror financing is thus the deterioration of this “necessary threshold” from probable cause to mere suspicion and innuendo. Instead, guilt by association is the new standard. The 9/11 Commission report cites the need to distinguish “the difference between seeing ‘links’ to terrorists and providing the funding for terrorists.”

4. Anti-terrorist financing policies deny charities fundamental due process.

The use of secret evidence by the Treasury Department and lack of due process for groups designated as supporters of terrorism has undermined the credibility of the government’s anti-terrorist financing efforts. Although the courts have upheld Treasury’s actions in each case, the scope of judicial review on appeals of Treasury action is extremely limited. Under the Administrative Procedure Act (5 U.S.C. 706(2) (A)) courts may only overturn an agency action if it is arbitrary and capricious and not based on “substantial evidence”. In the HLF case the court noted that “this standard does not allow the courts to undertake their own fact-finding, but to review the agency record to determine whether the agency’s decision was supported by a rational basis” (*Holy Land*

Foundation for Relief and Development v. John Ashcroft, et al., 219 F. Supp. 2d 67).

What is “substantial evidence?” The legal definition of the rule, according to Black’s Law Dictionary (8th ed. 2004), is, “The principle that a reviewing court should uphold an administrative body’s ruling if it is supported by evidence on which the administrative body could reasonably base its decision.” This is a very low threshold, especially considering that, unlike in normal administrative proceedings, secret evidence is used. Adding to this, the courts have found that the government’s interest in preventing further terrorist attacks outweighs charities’ interests in due process protections.

Treasury has defended these procedures as reasonable. At a 2004 Pace Law School forum, Chip Poncy, senior advisor to the assistant secretary for Terrorist Financing and Financial Crime at Treasury, highlighted the appeal procedures that exist for organizations that are designated. However, Harvey Dale, a professor of philanthropy and law at New York University School of Law, noted that the Treasury review process is ex parte, and the nonprofit involved is denied the right to learn of or confront the evidence against it. The standard for freezing and seizing assets is a “reasonable basis to suspect or believe,” which Dale said is the same standard rejected by the Supreme Court in the Guantanamo Bay detention case. Dale also noted that the IRS can

revoke the tax-exempt status of any charity shut down by Treasury, but “bad actors could just form a new charity,” limiting the real effectiveness of these powers to prevent terrorist financing.

5. There are no safe harbor procedures to protect charities acting in good faith or to eliminate the risk of giving to Muslim charities or charitable programs working with Muslim populations.

The Muslim faith requires families to give to charity. Known as “zakat,” these donations traditionally come at the end of Ramadan, the month of fasting, with a goal of giving 2.5 percent of a family’s savings. At the start of Ramadan in 2004, after the closure of the Islamic American Relief Agency, New Jersey Muslims asked the federal government to draw up a “white” list of Islamic charities to which they could donate without being suspected of terrorist ties. The Justice Department denied this request, claiming it was impossible to fulfill. “Our role is to prosecute violations of criminal law,” Justice Department spokesman Bryan Sierra said. “We’re not in a position to put out lists of any kind, particularly of any organizations that are good or bad” (U.S. Rejects Muslims’ Plea for ‘Approved’ Charities, *AP Alert*, Oct. 19, 2004).

This request for an approved list of charities reveals the anxiety shared by many Muslims over the lack of legal protection for donors and legitimate charitable organizations. In spite of this, Treasury

Secretary John Snow encouraged American Muslims to continue to give to charities and educate themselves about the groups they donate to, in order to make sure the funds are not being used to support terrorism. Yet the U.S. organizations that have been shut down were not on any government

There are no legal steps that allow organizations to cure problems, and no sanctions Treasury imposes short of seizing and freezing assets.

watch list before their assets were frozen. As a result, Muslims have no way of knowing which groups the government suspects of ties to terrorism.

Treasury has likewise refused requests to develop safe harbor procedures that charities and foundations acting in good faith can follow to avoid the danger of being shut down for unintentional or minor infractions. There are no legal steps that allow organizations to cure problems, and no sanctions Treasury imposes short of seizing and freezing assets. At the Pace Law School forum, Poncy maintained that these drastic sanctions are the tools chosen by Congress, and any changes to them must, therefore, be made by Congress.

In response to the fear and frustration this lack of guidance has created, a group of roughly 20 Muslim international aid groups, advocacy organizations, and other charities came together in March 2005 to form the National Council of American Muslim Non-Profits, a body which will establish oversight and governance guidelines for its members. The intent "is to really clear the name of Islam from

terrorist financing," said Mr. Salam Al-Marayati, whose group, the Muslim Public Affairs Council, organized the meeting along with the Islamic Society of North America (U.S. investigations into some major Islamic charities scare many donors, *American Muslim Perspective*, Apr. 27, 2005). However, such

steps still fail to ensure official legal protection against unwarranted and disruptive scrutiny and legal sanctions.

6. Government action has created the perception of ethnic profiling and negatively impacted Muslim giving.

While the government denies charges of ethnic profiling, many in the Muslim community have come to feel that they are under fire for their religious beliefs. Arsalan Ifikhar, the national legal director for the Council on American-Islamic Relations, echoed this sentiment, charging that the recent Senate Finance Committee investigation into the Islamic Society of North America "is indicative of federal law enforcement's dragnet against the American Muslim community" (Indiana-Based Islamic Society Cleared in Senate Investigation, *The Indianapolis Star*, Nov. 15, 2005).

In congressional testimony given in May 2005, Stuart Levey, Treasury Under Secretary for the Office of Terrorism and Financial Intelligence, reported that the government's legal pursuit of U.S.

and international charities was "making an impact and serving as a valuable deterrent." Speaking before the House International Relations Subcommittee on International Terrorism and Nonproliferation and House Financial Services Subcommittee on Oversight and Investigations, he said that "anecdotal evidence suggests that prospective donors are avoiding suspicious international charities altogether and are being far more watchful with their donations in general," noting that "this is a major success in its own right."

This "crackdown" on Muslim charities has profoundly altered the emotional and financial process of Muslim giving in this country. Many in the Muslim community fear that their donations might land them on a list of suspected terrorist sympathizers and supporters, even if they are completely unaware of any wrongdoing or if the charity comes under suspicion years later. For their part, some Muslim organizations have stopped giving money overseas or maintain their own international offices in an effort to directly oversee and safeguard their charitable work. In this climate of fear and suspicion, donations to Muslim charities have declined significantly since last Ramadan. Some Muslim donors are turning to nondenominational groups and local causes, while others are choosing to give anonymous cash donations—a practice that ends up hindering the government's ability to prevent terrorist financing and demonstrates the extent to which the right to give openly has been compromised.

7. Organizations and individuals suspected of supporting terrorism are guilty until proven innocent.

While the Treasury Department has allowed U.S.-based groups an opportunity to submit information on their behalf after assets have been frozen "pending an investigation," the groups cannot respond effectively, because they are put in the position of having to prove a negative (i.e. that they do not support terrorism) without knowing what secret information Treasury is using against them.

This new standard of "guilty until proven innocent" is reflected in the recent actions of the Senate Finance Committee. In November 2005, the Senate Finance Committee concluded a high-profile investigation into U.S. Muslim organizations and terrorism financing, saying it discovered nothing alarming enough to warrant new laws or other measures. The inquiry, which took nearly two years to conduct, used financial records given to the Internal Revenue Service, including donor lists of two dozen Muslim charities belonging to the Islamic Society of North America (ISNA). Yet despite a lack of any alarming evidence of terror financing, Grassley's committee issued a statement on Dec. 6, 2005 saying that "the fact that the committee has taken no public action based on the review of these documents does not mean that these groups have been 'cleared' by the committee," and that they will "continue to gather information and examine the operations of the charities." Perpetual suspicion seems to be the order of the day.

8. Charitable funds have been withheld from people in need of assistance and diverted to help pay judgments in unrelated lawsuits, violating the intentions of innocent Muslim donors.

The Treasury Department has resisted efforts to release the frozen assets of charities it has shut down for charitable purposes. In 2002, BIF applied to Treasury for a license to release funds raised from charitable contributions to a children's hospital in Tajikistan and the Charity Women's Hospital in Dagestan, Chechnya. The application included safeguards to ensure the money arrived at the proper destination. Treasury denied the request. Similarly, in April 2004 HLF requested permission to transfer \$50,000 to the Palestine Children's Relief Fund. Treasury denied HLF's request because of pending lawsuits on behalf of families of victims of terrorist attacks. There is no mechanism to appeal the Treasury decisions.

Charitable assets of groups designated by Treasury have become targets of lawsuits filed by families of terrorism victims, regardless of whether the charity had any direct connection to the incident involved. The premier example is the tragic case of David Boim, a U.S. citizen killed in a 1996 terrorist shooting in Israel. In May 2000, his parents filed suit against individuals and groups, including HLF, with alleged ties to Hamas, which had been blamed for the shooting. In November 2004, the U.S. District Court for the Northern District of Illinois found the defendants liable for "aiding and abetting" Hamas. It did not find

any direct ties between HLF and Hamas.

The "aiding and abetting" finding was based on one-sided evidence that was not subjected to the scrutiny afforded by standard due process. It takes on new credibility each time it is restated. The court in the Boim case relied heavily on Treasury's allegations in designating HLF as a supporter of terrorism, going so far as to allow otherwise inadmissible hearsay evidence under the public records exception. However, to date HLF has never had an opportunity to confront the evidence against it or put the information in context. The organization's attorney, John Boyd, points out that HLF provided aid to thousands of orphans, and only less than half a dozen had any relatives involved in terrorism, while a far greater number were orphans of fathers murdered by Hamas for being Israeli collaborators. (Interview, Dec. 20, 2005)

The case raises serious concerns for any organization providing aid in war-torn regions, where it would be difficult to find someone with no relative associated with one side or the other of a conflict. HLF has appealed the Boim decision. The upcoming criminal trial may be the first chance HLF will have to present its story.

The Boim case also raises a number of serious questions for all nonprofits. First, should the charitable assets of groups designated as supporters of terrorism be used exclusively for charitable purposes, or should they be available to pay damages to victims of terrorist acts? Must there be a

factual link established under the rules of evidence before liability is imposed, or can liability be based on allegations only?

Already the Boim case is being cited as an important precedent that could be used by victims of 9/11 and others. Many in the Muslim community oppose seizing a group's funds for this purpose, saying it violates the rights of individual donors, who are not on trial. "The community's worst fears are being realized," writes Laila Al-Marayati, a leader in the Muslim charitable community, in a report American Muslim Charities: Easy Targets in the War on Terror (See http://www.mpac.org/home_article_display.aspx?ITEM=755).

Supporters of the Boim's approach note that terrorist groups can be marginalized by depleting their assets. For example, in a May 24, 2000 article "The Boim Trial: A New Way to Fight Terrorism," Daniel Pipes of *The Jerusalem Post* pointed out that "the Southern Poverty Law Center some years ago won a comparable civil judgment against the Ku Klux Klan, impoverishing that organization, thereby severely reducing its reach and appeal." However, that case was based on direct liability of the KKK, not "aiding and abetting."

The potential reach of liability based on indirect ties, rather than evidence of illegal intent, could be enormous. Brendan Shiller, an attorney for the Islamic Association for Palestine, another defendant in the Boim case, told *The Jerusalem Post* the case set a legal standard "in which a Catholic church which donated space to the Sinn Fein for

a lecture by someone with Irish Republican Army links could be held liable for all IRA murders.... That theory of liability is just untenable and opens the door to ridiculous numbers of suits, and that doesn't accomplish anything" (US Islamic Charities Liable for Hamas Terror Attack, *The Jerusalem Post*, Nov. 14, 2004).

9. There is unequal enforcement of anti-terrorist financing laws.

A July 19, 2005 Halliburton-Watch.org article notes that the company has been under investigation by OFAC and the Depart-

Rather than seizing and freezing Halliburton's assets... OFAC sent an inquiry to Halliburton requesting "information with regard to compliance."

ment of Justice since 2001 for doing business with Iran, which is listed as a sponsor of terrorism. Rather than seizing and freezing assets "pending an investigation," however, OFAC and Justice proceeded in a way the nonprofit world would envy. First, OFAC sent an inquiry to Halliburton requesting "information with regard to compliance." Halliburton sent a written response explaining why they felt they were in compliance with the law. Halliburton's defense seems to rest on the fact that its dealings with Iran are done through a Cayman Islands subsidiary, not its U.S.-based entity.

Over two years later, in January 2004, OFAC sent a follow-up letter requesting additional information, to which Halliburton responded that March. In July of that year, the U.S. Attorney for the Southern District of Texas sent a grand jury

subpoena requesting documents and the case was referred to the Justice Department. On Sept. 22, 2005, the Progressive Caucus in the House of Representatives wrote the president asking that Halliburton be suspended from hurricane relief contracts for a host of reasons, including "dealing with nations that sponsor terrorism."

This case raises the following questions:

1. If Halliburton were a charity would its assets have been frozen like the U.S.-based Muslim charities?
2. Even though little is known about the evidence OFAC relied on to freeze and seize assets of Muslim charities, it appears there is much stronger evidence against Halliburton. What legal distinction is OFAC making?
3. If U.S. charities formed Cayman Island subsidiaries could they avoid the USA PATRIOT Act, IEEPA, and Executive Order restrictions on dealings with groups or countries linked to terrorism?

This imbalanced enforcement in the campaign against terror financing also appears in the government's treatment of domestic and foreign nonprofit organizations. In response to questions at a Pace Law School forum, Poncy described instances where Treasury has worked with Saudi charities to help them restructure to avoid designation and freezing of assets.

He did not offer any explanation of why U.S.-based charities that have been designated did not receive similar treatment.

10. Treatment of Muslim charities hurts, rather than helps, the war on terrorism.

While extreme steps have been taken by our government to “safeguard” domestic nonprofits, these policies are not making us any safer. Current anti-terrorist financing legislation prescribes onerous procedures for financial institutions and nonprofits alike, yet do very little to target terror financing networks. For example, compelling grantees, employees, and vendors working with a charity to sign letters certifying that they do

not support terrorism is among the least effective law enforcement mechanisms ever devised. What exactly would stop a terrorist from signing such a letter? In fact, the true targets of this misguided approach are those organizations or individuals that sign these letters in good faith and face crushing sanctions if they fall prey to bad actors: the very groups we are purportedly trying to protect from abuse.

The costs of such policies greatly exceed the crippling administrative burdens of compliance. In pursuing ineffective strategies, we are actually diverting attention and resources away from more useful avenues. We are also undermining the important work of these

organizations. In its final report, the 9/11 Commission made strong recommendations about dealing with the root causes of terrorism. “A comprehensive U.S. strategy,” it said, “should include economic policies that encourage development, more open societies, and opportunities for people to improve the lives of their families and to enhance prospects for their children’s future.” To this end, the government should be working to better support legitimate charitable organizations performing vital development and peacemaking work throughout the world. Yet, these efforts by U.S. charities operating globally are those most at risk under current anti-terrorist financing laws and regulations.

Part 2: Status of Charities Shut Down by Treasury

In 2003, OMB Watch reported the forced closures of three of the largest, most high-profile Muslim groups in the country: The Holy Land Foundation for Relief and Development (HLF), The Global Relief Foundation (GRF), and the Benevolence International Foundation (BIF). (See *The USA PATRIOT Act and its Impact on Nonprofit Organizations* <http://www.ombwatch.org/article/articleview/1803/>.) This paper provides an update on what has happened to these three groups, as well as information about other Muslim charities that have been shut down or become targets of government investigation.

Holy Land Foundation (HLF)

In December 2001, the FBI raided HLF’s Texas office, seizing more than \$5 million in assets, along with all documents and property. OFAC designated HLF a supporter of terrorism under the International Emergency Economic Powers Act (IEEPA) and Executive Orders 13224 and 12947, alleging HLF funneled millions of dollars to Hamas, which was designated as a terrorist organization in 1995, and provided funds to families of suicide bombers. HLF denied the charge, saying it only provided humanitarian relief, with a focus on Palestinian refugees and victims of

armed conflict in Bosnia, Kosovo, and Turkey.

In early 2002 HLF challenged the asset seizure in federal court, seeking injunctive relief against continued freezing of its assets without notice or due process, and based on secret evidence. After the suit was filed, Treasury notified HLF and the court that it was considering whether to re-designate HLF based on additional evidence and gave the organization 31 days to respond. Treasury considered the HLF response and re-designated them one month later.

Subsequently the U.S. District Court for the District of Columbia upheld Treasury’s action (Holy

Land Foundation for Relief and Development v. John Ashcroft, et.al., 219 F. Supp. 2d 67), based on a legal standard that severely limits the scope of judicial review. The court noted that it was limited to a review of the agency record to determine whether there was a rational basis for action.

The court also found that the record has "ample evidence that FBI informants reliably reported that HLF funds Hamas." However, the court allowed Treasury to rely on hearsay and secret evidence in making its case. It rejected HLF's attempt to provide information in its defense by striking its exhibits from the record, saying review of agency action must be limited to the administrative record.

The U.S. District Court stated that "the government's entry into HLF's offices...and seizure of equipment...without a warrant, do raise significant Fourth Amendment [search and seizure] concerns. Indeed, these allegations state a classic Fourth Amendment violation." However, the court held that freezing assets is not a seizure, but a "temporary deprivation" of property, so the Fourth Amendment claim was dismissed. The court did suggest that, "plaintiff may... some day have a credible argument that the long-term blocking order has ripened into vesting of property in the United States."

The court's decision was upheld on appeal to the U.S. Circuit Court for the District Columbia (333 F. 3d 156, 2003), which found that "HLF has no right to confront and cross-examine witnesses" and Treasury's notice "need not dis-

close the classified information" to be presented to the court outside the public record. The court also upheld seizing and freezing of assets without prior notice, based on IEEPA and the national emergency declared by the President after 9/11, saying it "promotes an important and substantial government interest in combating terrorism."

The appeals court also agreed with the lower court's finding that there is "no other, narrower means of ensuring charitable contributions to a terrorist organization are used for a legitimate purpose." This is a very disturbing finding, given that less drastic sanctions could be imposed. Indeed, similar alleged infractions have been treated with much greater leniency when the entity in question is a for-profit corporation, and Treasury has helped some foreign charities restructure in order to avoid problems.

On July 26, 2004, HLF sent a letter to the Department of Justice Inspector General requesting an investigation into the FBI's handling of the case, alleging "materially misleading" evidence. HLF said the FBI used a "distorted" and erroneous translation of sensitive Israeli intelligence material as the crux of its case. An independent translating service in Oregon, hired by the HLF to review the evidence, cited 67 discrepancies or errors in translation in a four-page FBI document used in the case. Later the same day the Justice Department unsealed an indictment (see <http://www.usdoj.gov/usao/txn/PressRel04/HLF%20Indictment.pdf>), of the

charity and its seven top officials, bringing criminal charges of providing material support to Hamas and money laundering. (DOJ press release at http://www.usdoj.gov/opa/pr/2004/July/04_crm_514.htm) That case is the first criminal action against a U.S.-based charitable organization. The case has not yet gone to trial.

The Inspector General declined to investigate the HLF accusations, saying the issue of the false translations could be fully aired in the criminal case. However, John Boyd, attorney for HLF, says "there is no guarantee that the jury will ever have the opportunity to hear that the allegations against HLF are founded on falsified translations." (Interview, Dec. 20, 2005) "We're one thousand percent confident of our innocence, and we're going to fight as long as we can to get the truth out," said Shukri Abu Baker, the foundation's former chief executive (Islamic Charity Says F.B.I. Falsified Evidence Against It, *The New York Times*, July 27, 2004.)

In the meantime, a heated battle is raging over the organization's frozen assets. In April 2004 HLF petitioned Treasury for permission to transfer \$50,000 of its frozen assets to the Palestine Children's Relief Fund. Lawyers for plaintiffs in two cases seeking damages on behalf of victims of terrorism strongly objected to the request, arguing that their clients have priority in claiming the remaining assets. Treasury denied HLF's request because of the lawsuits. There is no mechanism to appeal Treasury's decision. Salam Al-Ma-rayati of the Muslim Public Affairs

Council told *The New York Times* on April 15, 2004, "This is still the donor's money, and it should go where the donors wanted it to go, to good, charitable causes."

In May 2000 the parents of David Boim, a U.S. citizen killed in a terrorist shooting in Israel in 1996, filed suit under the 1990 Anti-Terrorism Act against individuals and groups, including HLF, with alleged ties to Hamas, which had been blamed for the shooting. On Nov. 10, 2004, the U.S. District Court for the Northern District of Illinois granted summary judgment in favor of the Boims, finding the defendants liable and limiting the jury trial to set the amount of damages. (See *Boim v. Quranic Literacy Institute*, 340 F.Supp.2d 885, N.D.Ill., 2004) The court did not find direct ties between HLF and Hamas or the Boim killing. Instead, it found the defendants liable for "aiding and abetting" Hamas, based on Treasury's allegations in the 2001 designation and the criminal indictment.

On Dec. 8, 2004 the jury awarded the Boims \$52 million, and the court tripled the damages pursuant to the Anti-Terrorism Act, bringing the total to \$156 million. In the summer of 2005, HLF and other defendants appealed, and the case was argued before the U.S. Court of Appeals for the 7th Circuit in late 2005.

Global Relief Foundation (GRF)

On Dec. 14, 2001, the Treasury Department seized and froze the assets of the Global Relief Foundation (GRF), a Muslim char-

ity based in Illinois, pending an investigation into ties to terrorist organizations. According to OFAC's website "the Global Relief Foundation... and its officers and directors have connections to, and have provided support for and assistance to Usama bin Laden, al Qaeda, and other known terrorist groups." (See http://www.treasury.gov/offices/enforcement/key-issues/protecting/charities_execorder_13224-e.shtml#g.)

GRF contested the action, seeking an injunction in the U.S. District Court to end the order blocking assets and return the seized property. The court upheld the Treasury action, and GRF appealed to the U.S. Court of Appeals for the 7th Circuit. Treasury allowed GRF to submit information on its own behalf while the investigation was pending. This opportunity is of limited use, since GRF could only respond to unclassified information released by Treasury and did not know what secret evidence was being submitted to the court. On Oct. 18, 2002, a few days before oral argument began in the appeal, OFAC formally designated GRF as a "Specially Designated Global Terrorist" organization, adding it to the list of groups barred from doing business in the United States. This limited the arguments on appeal to whether the OFAC action was arbitrary and capricious and not based on "substantial evidence."

On Dec. 31, 2002 the appeals court upheld Treasury's action as authorized under IEEPA and under the limited standard of review on appeal. The court also held that use of secret evidence and lack

of notice and pre-seizure hearing were not unconstitutional because of the government's overriding interest in stopping terrorism and preventing funds from being transferred out the country while a hearing is pending.

Global Relief's assets remain frozen although no criminal charges have been filed against it. Like HLF, Global Relief has still not had the opportunity to confront evidence against it or present evidence on its own behalf to a court.

Benevolence International Foundation (BIF)

On Dec. 14, 2001 the FBI searched Benevolence International Foundation's (BIF) offices in Palos Hills, Illinois and Newark, New Jersey. They seized financial records and other documents and property, including computers and personal effects of BIF employees. On the same day, the FBI searched the home of Enaam Arnaut, BIF's Chief Executive Officer, and seized personal effects belonging to him and his family (including family photographs and a microphone from a Nintendo game). On Nov. 19, 2002, the Treasury Department placed BIF on the Specially Designated Global Terrorist list.

According to Treasury, BIF allegedly "provided support for and has been linked in other ways to al Qaeda and its operatives." (See http://www.treasury.gov/offices/enforcement/key-issues/protecting/charities_execorder_13224-b.shtml#b) The background provided on BIF also claims that Arnaut had close ties to bin Laden. On January 30, 2002,

BIF filed suit (*Benevolence Int'l Found., Inc. v. Ashcroft*, No. 02 C 763 (N.D. Ill. filed Jan. 30, 2002)) to contest this action. In March 2002 BIF filed a motion for preliminary injunction, asking that the order blocking its assets be lifted and its property returned. The supporting documents included a declaration signed by Arnaout "under penalty of perjury." On April 29, 2002, the government filed criminal charges against BIF and Arnaout, alleging that their sworn statements used false material.

In May 2002, the U.S. District Court for the Northern District of Illinois stayed the civil case pending the outcome of the criminal case, and then dismissed the civil case on its own motion (200 F. Supp. 2d 935). At the criminal trial in February 2003, Judge Suzanne B. Conlon held that the prosecution had "failed to connect the dots" to prove a relationship between BIF, Arnaout and bin Laden. The charges against BIF were dismissed. Arnaout plead guilty to a lesser charge of fraud, admitting that he lead BIF donors to believe funds were being used for humanitarian purposes, but that some funds were diverted to Chechen and Bosnian soldiers. He is currently serving an 11-year prison sentence.

In 2002, BIF applied for a license from OFAC to dispense funds earmarked for charitable causes abroad, including a children's hospital in Tajikistan and the Charity Women's Hospital in Dagestan, Chechnya. BIF supported this request with signed affidavits from hospital staff attesting to the importance of the expected fund-

ing, and even offered to have FBI agents accompany the funds to their overseas destinations. Nevertheless, the request was denied. There is no appeal process.

By the time the criminal cases were resolved BIF's resources were gone and it was not able to file another civil action challenging seizure of its assets. As a result, the organization is shut down permanently, even though no terrorism-related charges were ever proven, and BIF never had a chance to challenge Treasury's evidence in open court or present witnesses on its own behalf.

In a speech at Pace University Law School, BIF attorney Matthew J. Piers described the legal action against BIF as the "malevolent destruction of a Muslim charity." He noted that the government's case was founded on bad intelligence and a case of mistaken identity, based on information from an Attorney General Emergency Physical Search Authorization. In concluding the story of this group, Piers said, "It is hard to see how the government's activities with regard to Muslim charities have had any positive effect on the war on terrorism...One thing is clear: critically needed resources for the many refugees and people living in poverty and other dire circumstances throughout the Islamic world have been terminated."

Government suspicion and scrutiny have also spread to BIF's principals and donors. For example, in 2004, federal agents raided the home of Syed Maswood, a Bangladeshi immigrant who became an American citizen

in 1997 and who donated money to BIF years before it was accused of supporting terrorism. Although Maswood has not been charged with any crime, his name remains on the no-fly lists. Ironically, a year after the raid, Maswood received an invitation to serve as an honorary chairman at a Republican fundraiser and dine with President Bush in Washington. Maswood declined the invitation.

Islamic American Relief Agency (IARA)

On Oct. 13, 2004 the Treasury Department designated the Islamic American Relief Agency (IARA), along with five senior officials from the organization, as supporters of terrorism. The IARA is a U.S. 501(c)(3) tax-exempt organization formed in 1985 that is focused on charitable work for orphans, disaster and famine relief, and aid to refugees. The Treasury action froze all accounts, funds and assets of IARA in the United States and criminalizes the provision or donation of money to any of its offices.

According to the Treasury Department, IARA is an affiliate of the Islamic African Relief Agency, a Sudanese charity suspected of supporting al Qaeda. In a four-page fact sheet on its website, the Treasury Department draws connections between terrorists and some of the African charity's many offices and officials. (See <http://www.treas.gov/press/releases/js2025.htm>)

IARA's attorney, Shereef Akeel, told *The Missourian* that IARA-USA, a separate and independent

organization from IARA-Sudan, was "trying to combat terrorism" and would cooperate with the government. IARA-USA has its own board of directors, administrative structure, executive decision-making process, and legal and financial accountability obligations. None of these functions or responsibilities is shared with any other organization.

Akeel also said the FBI was contacting IARA donors, and that IARA had no way of communicating with them because the FBI had seized all their records, including donor and mailing lists (Lawyer Backs Islamic Agency, *The Missourian*, Oct. 22, 2004). He said, "Many people who are very far removed from the investigation are being affected. They just thought they were doing good."

No links were made between the U.S.-based office and terrorism. In fact, according to a *USA Today* report in September 2000, IARA received grants from the U.S. Agency for International Development for disaster and poverty assistance during the 1990s, totaling \$4.2 million. In November 2000, USAID cancelled the grants because, according to a letter from then-Under Secretary of State Thomas Pickering, continuation "would be contrary to the national defense and foreign policy interest of the United States" (Agents Search Islamic Relief Group, *AP Alert*, Oct. 13, 2004).

On Dec. 30, 2004, IARA filed suit in the U.S. District for the District of Columbia challenging the constitutionality of Treasury's action, asking for a preliminary injunction against the designation

and seizure of its assets. In January 2005, Treasury wrote to Akeel saying the designation of IARA was not a case of mistaken identity with the African group. The court denied the injunction request in February, and on Sept. 15, 2005 granted the government's motion to dismiss.

The court noted that "The OFAC blocking notice stated that the IARA-USA could challenge the blocking order by writing a letter to the Director of the OFAC." However, IARA-USA was not allowed to see the affidavits supporting the search warrant authorizing the raid on its office, so it could not know what allegations it needed to rebut.

No criminal charges have been filed against IARA. At the time of the designation, a spokesman for InterAction, the U.S. coordinating and policy body for more than 160 international charities, said that IARA was a member in good standing and was in compliance with the organization's voluntary standards for administration and procedures. However, after the Treasury designation, InterAction suspended IARA's membership "in light of the actions of the U.S. Department of the Treasury and the loss of their tax-exempt status."

During a search of IARA's Columbia, MO, office the FBI seized boxes, computers and file cabinets. The search expanded to storage lockers and the home of Mubarak Hamed, who served for four years as the charity's executive director. He also worked as the charity's president between 1992 and 1998. Hamed is employed by the state of Missouri as an economist, and

returned to work within a few days of the FBI raid. *The Missourian* reported that the FBI told the state, Hamed is not a "concern." (FBI reportedly finds Hamed not a 'concern', *The Missourian*, Oct. 24, 2004.) State official Tim Daniel told *The Missourian* the state does not have the resources to do rigorous background checks on prospective employees, and added, "You're getting into legal area here where I do not feel confident to comment. Is this group illegal, and is his participation in this group illegal? If the answer is no, are you placing the state in a position where if you do a background check that allows someone to be arbitrary and capricious about not hiring someone?"

Al-Haramain Islamic Foundation

The U.S. branch of the Al-Haramain Islamic Foundation, Inc. was designated as a supporter of terrorism in September 2004. It was the thirteenth designation in 2004 alone of Al Haramain branches throughout the world. The U.S. branch was established in 1997 by Pete Seda, an Oregon tree trimmer, and operated a prayer house and distributed Islamic literature. In February 2005, the charity was indicted and its assets frozen for allegedly helping to launder \$150,000 in donations five years ago to help al Qaeda fighters in Chechnya.

Yet in the absence of proof of whether or not the funds ended up in terrorist hands, the indictment was based largely on the charge that one of the officers of the charity, Soliman Buthe, transported

\$150,000 in traveler's and cashier's checks to Saudi Arabia without notifying authorities. Although federal law requires travelers to report when they are carrying more than \$10,000 into or out of the country, there are only warnings and mandatory forms to fill out upon entering the country. Buthe's lawyer, Tom Nelson, contends that his client had no knowledge of this requirement, and in the absence of proof of knowing violation of the statute, "we don't think he can be found guilty" (U.S. Indicts Oregon Charity Linked to Saudis, *The Washington Post*, Feb. 19, 2005).

In September 2005, a federal judge dismissed criminal charges against Al Haramain at the request of federal prosecutors, who asked that the charges be dropped because all that remains of the organization is a corporate shell. Marc Blackman, the attorney representing the U.S.-based Al-Haramain branch, requested that the government's motion to dismiss the charges be rejected, arguing that the case should either proceed to trial with the current indictment or be dismissed with prejudice. As it now stands, Seda and Buthe are considered international fugitives and the government maintains the ability to revive the case in the future.

Al Haramain and two of its U.S.-based attorneys filed suit against the National Security Agency (NSA), OFAC and others in the U.S. District Court in Oregon in late February 2006, claiming NSA conducted illegal, warrantless surveillance of their communications. The complaint says the surveillance occurred during

March and April of 2004, after the organization had been shut down but before it was officially designated as a supporter of terrorism. It seeks \$1 million in damages for each plaintiff.

According to the Washington Post, the surveillance was discovered when the FBI mistakenly provided the attorneys with transcripts of the intercepted conversations. (Saudi Group Alleges Wiretapping by U.S., *Washington Post*, March 2, 2006) The FBI demanded return of the documents from attorney Wendell Belew, based in Washington, D.C., and the Washington Post, which had received a copy from Belew. Tom Nelson, one of the attorneys representing the plaintiffs, filed a motion under seal asking the judge to review unspecified documents, presumably the transcripts of the calls and emails.

KindHearts USA

On Feb. 19, 2006 the Treasury Department froze the assets of KindHearts USA, a humanitarian organization whose mission is to provide aid for children and families living in poverty in the West Bank and around the world. The doors of the Toledo-based charity were padlocked "pending an investigation." The Treasury Department announcement stated that "KindHearts officials and fund-raisers have coordinated with Hamas leaders and made contributions to Hamas affiliated organizations." Hamas has been designated as a terrorist organization by the U.S. government. KindHearts officials vigorously refute the allega-

tions of support for any terrorist group.

KindHearts says it is a humanitarian aid organization, and raised \$5.1 million in 2004. It has branches in Lebanon, the Gaza Strip and Pakistan. The Treasury Department alleges it gave more than \$250,000 to the Sanabil Association for Relief and Development, which was designated as a terrorist organization in August 2003. KindHearts board chair Dr. Hatem Elhady told the *Toledo Blade*, however, that it contracted with Sanabil to provide aid in refugee camps before the designation was made, and the amount was no more than \$115,000, saying, "We did not just give money. We gave it for specific projects, and we saw the results, and we have the receipts." (Leaders vigorously rebut U.S. allegations; board members deny Hamas ties, *Toledo Blade*, Feb. 21, 2006)

The evidence in the Treasury Department's press release focuses on the group's ties with other suspected individuals and organizations, rather than action taken by KindHearts. Stuart Levey, Treasury Under Secretary for Terrorism and Financial Intelligence, charged that, "KindHearts is the progeny of Holy Land Foundation (HLF) and Global Relief Foundation (GRF)," groups that were shut down by Treasury in 2001. For example, the founder of KindHearts, Jihad Smaili, was previously a public relations representative for the Global Relief Foundation. The Treasury Department announcement states that, "Smaili founded KindHearts with the intent to succeed fundraising efforts of both

HLF and GRF, aiming for the new NGO to fill a void caused by the closures.”

The Treasury Department also cites a KindHearts “connection” to a former employee of HLF who was indicted by a federal grand jury in Texas for providing material support to Hamas. Mohammed El-Mezain had been retained to raise funds for the organization, but Smaili said the contract was voided as soon as KindHearts learned about the indictment. The case has not yet come to trial.

Jihad Smaili, an attorney and KindHearts board member, rejected the Treasury Department’s allegations: “I know the government has listened to every conversation that we’ve made and traced every wire sent from KindHearts USA to Lebanon or Palestine,” he said. “They know exactly what’s going on and that we have not done anything wrong.” Smaili noted that by using its authority under Executive Order 13224, the Treasury Department does not have to prove its allegations in court. There is no deadline for the Treasury Department to complete its investigation, making it likely that the organization will go out of business even if it is ultimately cleared.

Kind Hearts reports adherence to an exhaustive array of administrative compliance measures promoted in Treasury’s *Anti-Terrorist Financing Guidelines: Voluntary Best Practices for U.S.-Based Charities*, including checking the names of potential donors and contractors against terror lists and providing in-kind goods and services rather than cash donations. In a

December 2005 interview with *The Cleveland Plain Dealer*, Smaili acknowledged that while this system is a huge financial burden, “our goal is survival. We want our charity to remain open and helping around the world (Muslim Charity Drawing Scrutiny, *The Cleveland Plain Dealer*, Dec. 6, 2005).

In response to the closure, a coalition of 10 national Muslim groups, the American Muslim Taskforce on Civil Rights and Elections (AMT), sent a letter to Treasury Secretary John Snow stating, “As leading American Muslim organizations, we note that although we understand the political climate of our country and support our government’s efforts to thwart terrorist financing, we find it unfair that our government has yet made another extrajudicial decision to effectively wipe-out more than five years of humanitarian assistance to the world’s needy by the mere stroke of a pen. The immediate effects of KindHearts’ closure have already been felt in orphanages, schools, shelters, and medical centers around the world.”

The statement from KindHearts explains that over \$1 million was frozen, most of which had been earmarked for earthquake victims in Pakistan and for a new office in Indonesia. It called on the Treasury Department to ensure the funds are used for humanitarian aid, stating:

“KindHearts is prepared to agree to the distribution of the funds currently held by our Government, except for those funds that will be expended

on payment to employees for past services provided and for upcoming legal fees, to be spent under the auspices and administration of the USAID Program (of which KindHearts is a member) or any other NGO (United Nations, Red Crescent, etc.) on KindHearts programs, or any other humanitarian program that it deems justified. However, KindHearts requests that special consideration be given to the refugees in the earthquake ravaged areas of Pakistan since the overwhelming majority of frozen funds were earmarked for projects therein.”

KindHearts was among two dozen Muslim organizations investigated by the Senate Finance Committee, which found no wrongdoing. In fact, the failure of previous public investigations to find evidence of support for terrorism, along with the timing of the closure—on the eve of Hamas’ ascendancy to power in the Palestinian territories—has raised questions of possible political motivations.

KindHearts has called on the government to “not resort to its usual practice of hiding behind the veil of its own laws which have questionable constitutional legitimacy, i.e. the use of secret evidence and other extrajudicial mechanisms under the pretext of national security pursuant to

the USA PATRIOT Act. KindHearts only requests that to which it is entitled to under our often envied principles of freedom and democracy.”

New Targets of Government Investigation

In the absence of sufficient evidence to try and convict charities already designated as supporters of terrorism, the FBI and the Treasury Department have moved on to new suspects. These investigations have been based on tenuous factual grounds that give the impression Treasury's standard is guilt by association. Indeed, at a June 2005 Georgetown University panel on charities and the war on terror, law professor David Cole reported that the so-called "preventive paradigm" of preemptively weeding out potential threats to national security has resurrected guilt by association from the McCarthy era.

Kinder USA

An example of this trend is Treasury's treatment of Kinder USA, an organization that provides aid for children in war-torn regions. In January 2004, a federal grand jury issued a subpoena for the group's tax returns and other documents. The board promptly suspended all fundraising activities, fearful that funds intended to aid children in war zones would be entangled in the ensuing investigation. For months the FBI released no further information, and would not discuss its concerns with Kinder USA officials. The "evidence" against them appears to be based largely on its ties to suspect individuals and groups. One of the founders previously served as the Secretary of the Holy Land Foundation. Kinder USA leaders felt they had nothing to hide. Given the lack of Justice Department

responsiveness, the organization resumed fundraising four months after the subpoena to support its ongoing charitable activities. Yet, their donors, their employees, and their board remain fearful that the organization may soon be shut down in the course of the investigation.

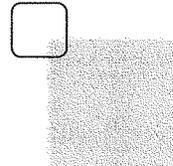
Islamic Society of North America (ISNA)

In November 2005, the Senate Finance Committee concluded a high-profile investigation into U.S. Muslim organizations and terrorism financing, saying it discovered nothing alarming enough to warrant new laws or other measures. The inquiry, which took nearly two years to conduct, used financial records given to the Internal Revenue Service, including donor lists of two dozen Muslim charities belonging to the Islamic Society of North America (ISNA). ISNA is the largest Muslim organization in North America, providing social services and education to the Muslim community. The organization received federal funds in 2004 and 2005 through the Faith Based and Community Initiative. Karen Hughes, Under Secretary of State for Public Diplomacy, addressed the group in August 2005.

ISNA remains concerned about the Senate investigation and its impact on the organization's reputation. While the charity welcomed an end to the investigation, Grassley's committee issued a new statement on Dec. 6, 2005 saying that "the fact that the committee has taken no public action based on the review of these documents does not mean that these groups

have been 'cleared' by the committee," and that they will "continue to gather information and examine the operations of the charities."

This prolonged scrutiny of the umbrella group has been widely reported and has cast doubt on the legitimacy of its work at a time when Muslim charities are already facing considerable challenges. Arsalan Iftikhar, the national legal director for the Council on American-Islamic Relations, charged that the investigation "is indicative of federal law enforcement's dragnet against the American Muslim community" (Indiana-Based Islamic Society Cleared in Senate Investigation, *The Indianapolis Star*, Nov. 15, 2005).



Conclusion: *What's been accomplished, and at what cost?*

As we enter the fifth year in the war on terror financing, there is growing cause for concern. Despite powerful new investigative tools, little has been accomplished, and at far too great a cost. According to the 9/11 Commission staff monograph on terrorist financing, the cases of BIF and GRF illustrate some of the dangers inherent in the government's post-9/11 strategy of "active disruption through criminal prosecution." Treasury does not seem to recognize these dangers. Treasury Under Secretary for the Office of Terrorism and

Financial Intelligence Stuart Levey defended the use of designations of charities by emphasizing that the "designation process entails exhaustive research to ensure it is fair and fully supported by evidence."

Yet to date, the government has officially charged only one organization with supporting terrorism, and secured no convictions. In addition to this "aggressive" new tool afforded to government agencies, investigators have also begun to manipulate other means of pressure and intimidation. For example, a growing number of

immigration charges, arrests, and deportations speak to the fact that the unequal and targeted application of immigration law amounts to discrimination.

Looking forward, there is an urgent need for the government to reexamine policies that target the nonprofit sector with little prospect of stopping terrorism and at the expense of important humanitarian and human rights work and the constitutional rights of U.S. donors and U.S.-based charities.

QUESTIONS TO THE PANELISTS FROM CONGRESSMAN KEITH ELLISON following a Hearing entitled "Anti-Money Laundering: Blocking Terrorist Financing and Its Impact on Lawful Charities" before the U.S. House of Representatives, Committed on Financial Services, Subcommittee on Oversight and Investigations, May 26, 2010

Responses of Dr. Matthew Levitt, director of the Stein Program on Counterterrorism and Intelligence at The Washington Institute for Near East Policy

1) Should the Treasury Department consider implementing new rules and procedures to assist Muslims contributing to charities?

Treasury resources, such as its website, already provide a clear list of designated charities and entities that are affiliated with terrorist organizations. The Financial Action Task Force (FATF), the multilateral technocratic body that sets international standards to combat money laundering and terrorism finance, as well, provides information about charitable organizations and individuals affiliated with terrorist groups. Moreover, anyone who wishes to donate to a charity must do their part in researching the organization to which they would like to give funds. One would hope that donors do not give money out lightly to an organization without knowing its background, history, and where his or her money is going.

The clean image of violent organizations engaged in charitable activity, often operating in a corrupt environment, leaves them open to exposure. The most effective means of exposing the underlying fraud inherent in such organizations whereby donors are led to believe they are donating funds to nonviolent, humanitarian organizations, when those funds are actually going to fund Hamas, Hezbollah, Tamil Tigers, or similar groups, is by publicly designating such groups as a means of informing the public and disrupting terrorist financing. Recognizing this truism, the U.S. Treasury Department has proactively sought to help the charitable sector better regulate itself from diversion or exploitation by rogue actors. Treasury developed and published guidelines of best practices for charities, as well as a risk matrix identifying "common risk factors associated with disbursing funds and resources to grantees."

There is, however, critical need for independent scholarship on the gray area between charitable giving and terror financing. The government can only do so much to help the charitable sector and donors self-regulate. The fact that the government's work in this area is often based on sensitive intelligence and therefore cannot be fully transparent, makes the work of outside scholars even more essential. Similarly, the activities of those who divert charitable funds for illicit purposes are by their very nature covert. Proper due diligence demands more than just hiring a reliable accounting firm to balance the books. It requires collecting information about the charity's partners and recipient agencies operating on the ground, often in areas of conflict where such scrutiny is difficult. Scholarship can fill these gaps. Research can inform donors whether recipient agencies have taken all possible precautions against supporting terrorism. Research can also uncover whether recipient organizations partner with any other charities or service agencies with ties to terrorist elements.

One reason charities remain vulnerable to terrorist financing, according to the Financial Action Task Force -- an international body that sets global standards designed to prevent illegal financing of terrorist groups -- is that charities do not face the strict regulatory requirements that other entities, such as financial institutions or private companies, must follow. Despite their obvious shortcomings in recent years, banks and other companies

usually do subject their business dealings to robust due-diligence procedures. The same is not always the case for charities. But nonprofit organizations have no less a fiduciary responsibility to their donors than profit-making institutions have to their investors. Both need to apply high standards of review to their activities out of their own interest in protecting their reputations from risk. The nonprofit world must appreciate the government's solemn responsibility to protect its citizenry, while the government must appreciate that charities come to this problem from a noble and well-intentioned perspective focused on facilitating quick, efficient, and timely aid. Thankfully, promoting opportunities for charitable giving and reducing the risk that those opportunities will be abused for illicit purposes are in no way mutually exclusive goals. There should be no debate over the threshold for harmonizing charity and security: a basic commitment to nonviolence. Balancing the risk of violence and the opportunity for philanthropy, government and charity both have a responsibility to err on the side of caution, even as they work together to promote giving and humanitarian activity. Donors, too, have the responsibility of doing their own research to ensure that the organization to which they are giving is legitimate and is not a front for illicit purposes.¹

- 2) **Do you support Treasury directing the creation of a single, user-friendly and publicly accessible database consolidating each of the government's prohibited lists so that donors, mosques and 501(c)(3)s can easily determine if a charity to which they wish to donate is on a prohibited list?**

First, it is necessary to point out that if a charity is on a prohibited list, this placement was not done lightly. These lists are neither arbitrary nor trivial. But it is also important to recognize that these are not comprehensive black lists. There are many other tools available to government agencies with which to deal with persons or entities engaged in terror finance, from law enforcement action to intelligence collection to diplomatic engagement with foreign governments. Therefore, if an entity is not on a government list it is not on some kind of de facto white list either. The existing lists are in fact easily searchable, but what is needed is for donors to do their own due diligence as well.

- 3) **Do you support Treasury providing a rebuttable presumption of innocence to donors (individuals, mosques and 501(c)(3)s) who can show that at the time of contribution, they checked the combined list and did not have reason to know that the organization was connected to terrorists or otherwise fraudulent?**

Donors have never been prosecuted for unwittingly donating to a charitable organization that is affiliated with a terrorist group. It also is not the government's procedure to punish those indirectly involved. Out of the seven U.S. charities designated under the Bush administration, only one (Holy Land Foundation for Relief and Development) was prosecuted. The other organizations were merely shut down and their assets frozen. In the H.L.F. case, no donor was punished for contributing funds to the group.

As noted above, if an entity is not on a government list it is not on some kind of de facto white list either. The existing lists are in fact easily searchable, but what is needed is for donors to do

¹ Dr. Matthew Levitt, "Charities Need to Raise Their Defenses against Exploitation by Terrorists," *Chronicle of Philanthropy*, June 13, 2010.
<<http://washingtoninstitute.org/template.cfm?id=1477>>

their own due diligence as well. Only in the most egregious, knowing and intentional cases does the Treasury Department resort to designating an entity or an individual, including charities.

4) The Bush administration shut down 7 charities that served Muslims and prosecuted one. Do you have a view as to whether these steps were appropriate?

In all seven cases in which a charity was designated, and in an eighth case involving a Blocking Pending Investigation (BPI), the administration acted based on clear evidence that the charities were operating in close cooperation with terrorist groups. It is important to recognize that the Treasury Department has never tried to punish unwitting donors to terror groups. And the process it has used to vet charities it considers terrorist fronts is robust and vigorous and errs on the side of caution. In these seven egregious cases, U.S. charities affiliated with terrorist groups have been designated by the Treasury Department, and the government has frozen their assets and closed their operations. In none of these cases was the government's action capricious or based on sparse, dated, or unreliable information.²

There can be no doubt that charity is a value of paramount importance to donors and recipients alike. International aid is a powerful tool in U.S. foreign policy and humanitarian giving is an American value and a laudable religious tradition. But, illicit actors have recognized that the charitable sector is vulnerable to abuse. It is therefore critical to expose the underlying fraud inherent in organizations that have been abused by terrorist groups, whereby donors are led to believe they are donating funds to nonviolent, humanitarian organizations, when those funds are actually going to fund Hamas, Hezbollah, Tamil Tigers, or similar groups. The most effective means of doing this is by publicly designating such groups as a means of informing the public and disrupting terrorist financing.

Consider the seven U.S. charities that have been designated by the United States since the Bush administration. Any claim that their designations were based on false premises falls flat in the face of available evidence and illustrations of the charities' activity:

1. Holy Land Foundation for Relief and Development

The Holy Land Foundation for Relief and Development (HLF) was the largest Muslim charity in the United States before its designation as a Hamas front organization in 2001 and subsequent conviction in 2008 for providing material support to Hamas.³ According to J. Millard Burr and Robert O. Collins, authors of *Alms for Jihad*, HLF was "America's most perfectly disguised Islamic 'charity.'"⁴ HLF was originally established in 1989 in California under the name of the Occupied Land Fund.⁵ It later relocated to Richardson, Texas in 1992 and established offices around the United States and in the West Bank and Gaza.⁶

² Dr. Matthew Levitt, "Charities Need to Raise Their Defenses against Exploitation by Terrorists," *Chronicle of Philanthropy*, June 13, 2010. <<http://washingtoninstitute.org/templateC06.php?CID=1477>>

³ U.S. Department of Justice, "Federal Jury in Dallas Convicts Holy Land Foundation and its Leaders for Providing Material Support to Hamas-Terrorist Organization," November 24, 2008. <http://www.justice.gov/usdoj/cxo/PressRe08/HLF_convict_pr.html>; U.S. Department of the Treasury, "Shutting Down the Terrorist Financial Network," December 4, 2001. <<http://www.treas.gov/press/releases/ps841.htm>>

⁴ J. Millard Burr and Robert O. Collins, *Alms for Jihad*, Cambridge: Cambridge University Press, 2006.

⁵ U.S. Department of the Treasury, "Shutting Down the Terrorist Financial Network," December 4, 2001. <<http://www.treas.gov/press/releases/ps841.htm>>

⁶ U.S. Department of the Treasury, "Shutting Down the Terrorist Financial Network," December 4, 2001. <<http://www.treas.gov/press/releases/ps841.htm>>

One of HLF's founders, Mousa Mohammed Abu Marzook, is the deputy chief of Hamas. Marzook was deported from the United States in 1997 based on his ties to terrorist elements. Marzook also provided the Holy Land Foundation with seed money. He was designated a terrorist by the U. S. Department of the Treasury in 1995 and was indicted in August 2004 by a federal court in Chicago, Illinois on charges of conspiracy to provide material support to Hamas. Today, Marzook resides in Damascus and remains a fugitive of justice.⁷

Following an extensive FBI investigation, the United States Treasury designated HLF and blocked its assets in December 2001 based on evidence that the organization had been funding Hamas.⁸ The organization subsequently was re-designated in May of 2002. The U.S. Department of the Treasury stated that it "provides millions of dollars each year that is used by Hamas."⁹ The HLF's assets were also frozen by the European Union in 2003.¹⁰

HLF directed funds to Hamas via smaller charitable organizations in the West Bank and Gaza, some of which were controlled by Hamas, and others which were affiliated with the group. Notably, HLF funds were transferred to Hamas-controlled schools that actively encouraged suicide bombing and offered financial support to the families of suicide bombers.¹¹

According to the U.S. Department of Justice, HLF was the primary fundraiser for the U.S. Palestine Committee, an organization established by the Muslim Brotherhood in order to aid Hamas. In a 1993 meeting of the Palestine Committee, HLF President Shukri Abu Baker stressed the importance of hiding HLF's ties with Hamas in order to continue raising funds in the United States. Additionally, another HLF representative was recorded (in a wiretapped phone call) saying that a suicide bombing was "a beautiful operation."¹²

The Holy Land Foundation funded charities publicly tied to Hamas. For example, FBI investigations determined that the Nablus Zakat (charity) Committee and certain individuals affiliated with it are tied to Hamas and received funds from the Holy Land Foundation.¹³ Indeed, evidence presented at the criminal trial of the HLF revealed that the Nablus charity committee

7 U.S. Department of the Treasury, "Shutting Down the Terrorist Financial Network," December 4, 2001, <<http://www.treas.gov/press/releases/p0841.htm>>; U.S. Department of Justice, "Chicago and Washington, D.C., Area Men Among Three Indicted in Racketeering Conspiracy in U.S. to Finance Hamas Terror Abroad," August 20, 2004, <http://www.justice.gov/criminal/pr/2004/08/2004_3714_CHICAGO_AND_WASHINGT.htm>; Dan Eggen, "Two Men Acquitted of Conspiracy to Fund Hamas Activities in Israel," The Washington Post, February 2, 2007.

8 U.S. Department of the Treasury, "Shutting Down the Terrorist Financial Network," December 4, 2001, <<http://www.treas.gov/press/releases/p0841.htm>>

9 U.S. Department of the Treasury, "Shutting Down the Terrorist Financial Network," December 4, 2001, <<http://www.treas.gov/press/releases/p0841.htm>>

10 European Union Press Release, "Fighting Against Terrorism; Updating of the List of Terrorist Organisations," Brussels, September 15, 2003, <<http://europa.eu/rapid/pressReleasesAction.do?reference=PRES/03/264&format=HTML&aged=0&language=EN&guiLanguage=en>>

11 U.S. Department of the Treasury, "Shutting Down the Terrorist Financial Network," December 4, 2001, <<http://www.treas.gov/press/releases/p0841.htm>>

12 U.S. Department of Justice, "Federal Jury in Dallas Convicts Holy Land Foundation and its Leaders for Providing Material Support to Hamas Terrorist Organization," November 24, 2008, <http://www.justice.gov/usa/txa/PressRel08/HLF_convict_pr.htm>

13 Dale L. Watson, assistant director for counterterrorism, Federal Bureau of Investigation, "Holy Land Foundation for Relief and Development, International Emergency Economic Powers Act, Action Memorandum," memorandum to R. Richard Newcomb, director of the Office of Foreign Assets Control, U.S. Department of the Treasury, November 5, 2001 ("Watson Memorandum").

received significant funds from abroad, including over \$457,000 provided by the Holy Land Foundation between May 1991 and October 2001.¹⁴

Loretta Napoleoni, author of *Terror Incorporated*, notes the Holy Land Foundation "collected \$42 million from 1994 to 2000, according to its tax returns. In 2000 it raised an estimated \$13 million in the U.S. alone (\$6.3 million in 1999 and \$5.8 million in 1998). The HLF also received money from other charitable institutions across North America. In December 2001, for example, South African intelligence unveiled a contribution to the HLF from the Jerusalem Fund, a Canadian aid organization."¹⁵ Additionally, in 1994, HLF's chief executive at the time, Shukri Abu Baker, addressed a meeting of the Muslim Arab Youth Association (MAYA), at which \$207,000 was collected for the families of Hamas militants.¹⁶

Several Hamas deportees were supported by the HLF and by Zakat Committees tied to Hamas, according to the FBI. Many of these Zakat Committees were themselves funded by the HLF. The FBI cited 18 families of Hamas deportees funded by the HLF.¹⁷

An FBI report on the HLF concluded, "It is the FBI's analysis that the zakat committees receiving HLF financial support are controlled by Hamas. GOI [Government of Israel] analysis has also determined that Hamas activists have been elected or appointed to senior leadership positions on these zakat committees."¹⁸ To be sure, the Hamas social welfare activists running these organizations in the West Bank and Gaza are often closely tied to the group's terror cells. Indeed, they are frequently current or former members of Hamas terror cells.¹⁹

Indeed, evidence presented at the HLF trial revealed that the foundation's leadership was well aware it was funding Hamas charities. For example, a 1991 report sent by an unindicted co-conspirator to HLF's chief executive officer, Shukri Abu Baker, specifically listed charity committees controlled by Hamas: Ramallah Zakat and the Islamic Charitable Society of Hebron, for example, were described with the phrase "All of it is ours."²⁰ HLF internal documents also reflect its efforts to direct funds to the families of "shahid", or martyrs.²¹ For example, an internal HLF aid application for aid form seeks assistance for the son of Yahya Ayash, Hamas' principal bomb maker who was killed.²²

Later, at the 1993 Philadelphia meeting of Hamas supporters in the North America, Muin Shabib, a member of Hamas's terrorist Qassam Brigades, categorized the institutions tied to Hamas as

¹⁴ Nabhat Zakat Committee Grant Report, US v. HLF et al., GX 020-0006, 3:04-CR-240-G.

¹⁵ Loretta Napoleoni, *Terror Incorporated: Tracing the Dollars Behind the Terror Networks*, New York: Seven Stories Press, 2005.

¹⁶ Loretta Napoleoni, *Terror Incorporated: Tracing the Dollars Behind the Terror Networks*, New York: Seven Stories Press, 2005.

¹⁷ Dale L. Watson, Assistant Director for Counterterrorism, Federal Bureau of Investigation, "Holy Land Foundation for Relief and Development, International Emergency Economic Powers Act, Action Memorandum," memorandum to R. Richard Newcomb, director of the Office of Foreign Assets Control, U.S. Department of the Treasury, November 5, 2001 ("Watson Memorandum").

¹⁸ Dale L. Watson, Assistant Director for Counterterrorism, Federal Bureau of Investigation, "Holy Land Foundation for Relief and Development, International Emergency Economic Powers Act, Action Memorandum," memorandum to R. Richard Newcomb, director of the Office of Foreign Assets Control, U.S. Department of the Treasury, November 5, 2001 ("Watson Memorandum").

¹⁹ Dale L. Watson, Assistant Director for Counterterrorism, Federal Bureau of Investigation, "Holy Land Foundation for Relief and Development, International Emergency Economic Powers Act, Action Memorandum," memorandum to R. Richard Newcomb, director of the Office of Foreign Assets Control, U.S. Department of the Treasury, November 5, 2001 ("Watson Memorandum").

²⁰ Testimony of Lara Burns, U.S. v. HLF, vol. 25, October 27, 2008.

²¹ Abu Baker Dep., Ex. 23; Abu Baker Dep., pp. 163-68, US v. HLF et al., GX 020-0006, 3:04-CR-240-G.

²² Abu Baker Dep., Ex. 20; Abu Baker Dep., pp. 137-46; Muhammad Anati confession translation, US v. HLF et al., GX 020-0006, 3:04-CR-240-G.

educational, social, charitable, cultural, medical, and religious. He then proceeded to name specific charities and organizations that he described as "our institutions." At the top of the list was "The Islamic Complex," a well-known Hamas institution funded by HLF.²³

According to the FBI, "evidence strongly suggests that the HLF has provided crucial financial support for families of Hamas suicide bombers, as well as the Palestinians who adhere to the Hamas movement."²⁴ By providing these annuities to families of Hamas members, the FBI concludes, "Hamas provides a constant flow of suicide volunteers and buttresses a terrorist infrastructure heavily reliant on moral support of the Palestinian populace."²⁵ Authors Burr and Collins concur, stating that "the evidence collected left no doubt that HLF was the principal U.S. charity supporting Hamas."²⁶

The federal, criminal prosecution of The Holy Land Foundation and several of its senior officers began in July 2007 in Dallas and ended in a mistrial in October 2007. A re-trial began in August 2008 resulting in the November 24, 2008, conviction of the Holy Land Foundation and five of its leaders on all counts, including providing material support to Hamas to the tune of \$12.4 million.²⁷

According to Patrick Rowan, Assistant Attorney General for National Security, "For many years, the Holy Land Foundation used the guise of charity to raise and funnel millions of dollars to the infrastructure of the Hamas terror organization. This prosecution demonstrates our resolve to ensure that humanitarian relief efforts are not used as a mechanism to disguise and enable support for terrorist groups."²⁸ HLF and the five individual defendants, Shukri Abu Baker, Mohammad El-Mezain, and Ghassan Blashi, Mufid Abdulqader and Abdulrahman Odeh, "provided approximately \$12.4 million in support to Hamas and its goal of creating an Islamic Palestinian state by eliminating the State of Israel through violent jihad."²⁹ Jimmy Gurule, a law professor at Notre Dame Law School and a former Under Secretary for Enforcement at the U.S. Department of the Treasury, considers the HLF case to be "the largest and most complex legal effort to shut down American financing for terrorist organizations in the Middle East."³⁰

2. Benevolence International Foundation

The Benevolence International Foundation (BIF) was established in the early 1990s. It had previously existed under the name *Lajnat al-Birr al-Islamiyah*, or Islamic Benevolence Committee

23 Transcript of Dr. Moin Shubih, Philadelphia meeting, U.S. v. HLF et al., 3:04-CR-240-G, GX 016-0059.

24 Dale L. Watson, Assistant Director for Counterterrorism, Federal Bureau of Investigation, "Holy Land Foundation for Relief and Development, International Emergency Economic Powers Act, Action Memorandum," memorandum to R. Richard Newcomb, director of the Office of Foreign Assets Control, U.S. Department of the Treasury, November 5, 2001 ("Watson Memorandum").

25 Dale L. Watson, assistant director for counterterrorism, Federal Bureau of Investigation, "Holy Land Foundation for Relief and Development, International Emergency Economic Powers Act, Action Memorandum," memorandum to R. Richard Newcomb, director of the Office of Foreign Assets Control, U.S. Department of the Treasury, November 5, 2001 ("Watson Memorandum").

26 J. Miltard Burr and Robert O. Collins, *Aime for Jihad*, Cambridge: Cambridge University Press, 2006.

27 U.S. Department of Justice, "Federal Jury in Dallas Convicts Holy Land Foundation and Its Leaders for Providing Material Support to Hamas Terrorist Organization," November 24, 2008, <http://www.justice.gov/usao/txa/PressRel08/HLF_convict_pr.html>

28 U.S. Department of Justice, "Federal Jury in Dallas Convicts Holy Land Foundation and Its Leaders for Providing Material Support to Hamas Terrorist Organization," November 24, 2008, <http://www.justice.gov/usao/txa/PressRel08/HLF_convict_pr.html>

29 U.S. Department of Justice, "Federal Jury in Dallas Convicts Holy Land Foundation and Its Leaders for Providing Material Support to Hamas Terrorist Organization," November 24, 2008, <http://www.justice.gov/usao/txa/PressRel08/HLF_convict_pr.html>

30 Jimmy Gurule, *Unfunding Terror: The Legal Response to the Financing of Global Terrorism*, Cheltenham, UK: Edward Elgar Publishing Limited, 2008.

(LBI), which had been founded in Pakistan around 1987 by Saudi Shaykh Adil Abdul Galil Betargy, with branches in Saudi Arabia, Pakistan and elsewhere.³¹

As stated in an unclassified 1996 CIA report, Lajnat al-Birr al-Islamiyya (LBI) is "probably a subsidiary of the Saudi-based Muslim World League."³² The Muslim World League is a dawa-activity based organization that was founded in 1962 in Saudi Arabia and it has been tied to supporting various terrorist groups.³³ This connection is significant as, according to the U.S. government, "one of the purposes of LBI was to raise funds in Saudi Arabia to provide support to the mujahideen then fighting in Afghanistan" and to provide "cover for fighters to travel in and out of Pakistan and obtain immigration status."³⁴ According to the CIA document, one employee may have been "involved in the kidnapping of six westerners in Kashmir in July 1995, and who left Pakistan in early October for Bosnia via the United States."³⁵ Additionally, "Lajnat al-Birr has provided support to a commander of at least one training camp in Afghanistan, according to a clandestine source."³⁶

In 1993, the Internal Revenue Service gave BIF the status of a tax-exempt organization. The initial director of BIF was Adel Batterjee, who later resigned and was replaced by Enaam Arnaout. BIF opened several overseas offices in Pakistan, Afghanistan, and Bosnia-Herzegovina, among other locations, including the United States.³⁷

Jimmy Gurule, a law professor at Notre Dame Law School and a former Under Secretary for Enforcement at the U.S. Department of the Treasury, describes BIF and GRF as "two notorious Islamic charitable organizations based in the U.S."³⁸ According to Victor Comras, former international monitor for the UN Security Council actions against Al Qaeda and the Taliban, "The Benevolence International Foundation is another Saudi umbrella charity organization that has helped fund al Qaeda."³⁹

In December 2001, U.S. authorities raided BIF's Chicago offices, where they found videos and literature glorifying martyrdom.⁴⁰ Then, on March 19, 2002, Bosnian authorities searched BIF's

31 United States of America v. Enaam M. Arnaout, United States District Court Northern District of Illinois, Eastern Division, Case #: 02 CR 892, <<http://www.justice.gov/usao/ila/indict/2002/02cr892.pdf>>; Dan Collins, "Charity or Terror?" *CBS News*, April 30, 2002, <<http://www.cbsnews.com/stories/2002/05/29/heros/main110500.shtml>>

32 CIA document, 1996, <http://intelwire.goplex.com/2006_11_21_exclusives.html>; See also David E. Kaplan, "How billions in oil money spawned a global terror network", *US News and World Report*, December 7, 2003.

33 Victor Comras, "Al Qaeda Finances and Funding to Affiliated Groups", *Strategic Insights*, Volume IV, Issue 1, January 2005; Unclassified 1996 CIA document. See also David E. Kaplan, "How billions in oil money spawned a global terror network", *US News and World Report*, December 7, 2003.

34 United States of America v. Enaam M. Arnaout, United States District Court Northern District of Illinois, Eastern Division, Case #: 02 CR 892, <<http://www.justice.gov/usao/ila/indict/2002/02cr892.pdf>>

35 CIA document, 1996, <http://intelwire.goplex.com/2006_11_21_exclusives.html>

36 CIA document, 1996, <http://intelwire.goplex.com/2006_11_21_exclusives.html>

37 United States of America v. Enaam M. Arnaout, United States District Court Northern District of Illinois, Eastern Division, Case #: 02 CR 892, <<http://www.justice.gov/usao/ila/indict/2002/02cr892.pdf>>

38 Jimmy Gurule, *Unfunding Terror: The Legal Response to the Financing of Global Terrorism*, Chichester, UK: Edward Elgar Publishing Limited, 2008.

39 Victor Comras, "Al Qaeda Finances and Funding to Affiliated Groups," in Jeanne K. Girardo and Harold A. Trinkunas, eds., *Terrorism Financing and State Responses: A Comparative Perspective*, Stanford: Stanford University Press, 2007.

40 "Treasury Designates Benevolence International Foundation and Related Entities as Financiers of Terrorism," US Department of Treasury, November 19, 2002, <<http://www.ustreas.gov/press/releases/po3632.htm>>; See also Evan F. Kohlmann, "The Role of Islamic Charities in International Terrorist Recruitment and Financing," Danish Institute for International Studies, Working Paper no 2006/7.

Sarajevo offices and seized weapons, booby traps, false passports, and plans for making bombs. This search also yielded an al-Qaeda organizational chart; notes on the formation of al-Qaeda by bin Laden, Azzam, and others; and "a list of wealthy sponsors from Saudi Arabia," including references to bin Laden.⁴¹ According to Loretta Napoleoni, author of *Terror Incorporated*, BIF was founded as "a Saudi-backed charity that had the task of bankrolling the Mujahedin."⁴²

BIF's bank accounts were blocked by the U.S. Treasury Department in December 2001 (pending investigation),⁴³ and in October 2002, BIF's Canada office executive director Enaam Arnaout was charged with racketeering conspiracy to provide material support to terrorists. Documents and cooperating witnesses indicate that Arnaout facilitated money and weapons transfers for bin Laden through BIF and had a personal relationship with both bin Laden "and many of [bin Laden's] key associates dating back more than a decade."⁴⁴

Enaam Arnaout had worked under aliases to assist fighters in Afghanistan, some who were commanded by Gulbuddin Hekmatyar and others who were commanded by Osama bin Laden. Additionally, Arnaout was a director of communications at a training camp in Afghanistan which was headed by Bin Laden.⁴⁵

According to Arnaout's indictment, he allegedly "distributed resources, including weapons, at the direction of Usama Bin Laden and others at that time."⁴⁶ Furthermore, "In or about 1991, defendant Arnaout, while employed by LBI, worked with others, including members of al Qaeda, to purchase rockets and assorted rifles in large quantities and distribute them to various mujahideen camps, including camps operated by al Qaeda."⁴⁷

The U.S. government affidavit asserts that Arnaout signed documents listing senior al-Qaeda member Mamdouh Salim as a BIF director when the latter traveled to Bosnia. Mohamed Bayazid, a bin Laden operative involved in efforts to obtain nuclear and chemical weapons for al-Qaeda, listed BIF's address as his residence on an application for a driver's license.⁴⁸ Enaam Arnaout pleaded guilty to racketeering in 2003, with regards to diverting BIF's funds to fighters in Chechnya and Bosnia, but denied the charges of being associated with al-Qaeda. In exchange for the guilty plea, the Illinois court dropped six of the seven original charges, including

41 "Government's Evidentiary Proffer Supporting the Admissibility of Co-Conspirator Statements." United States of America v. Enaam M. Arnaout. United States District Court Northern District of Illinois, Eastern Division. Case #: 02 CR 892. January 31, 2003. See also Evan F. Kohlmann, "The Role of Islamic Charities in International Terrorist Recruitment and Financing," *Danish Institute for International Studies*, Working Paper no 2006/7.

42 Loretta Napoleoni, *Terror Incorporated: Tracing the Dollars Behind the Terror Networks*, New York: Seven Stories Press, 2005.

43 "Treasury Designates Benevolence International Foundation and Related Entities as Financiers of Terrorism," US Department of Treasury, November 19, 2002, <<http://www.treas.gov/press/releases/po3632.htm>>

44 "Government's Evidentiary Proffer Supporting the Admissibility of Co-Conspirator Statements." United States of America v. Enaam M. Arnaout. United States District Court Northern District of Illinois, Eastern Division. Case #: 02 CR 892. January 31, 2003. See also Evan F. Kohlmann, "The Role of Islamic Charities in International Terrorist Recruitment and Financing," *Danish Institute for International Studies*, Working Paper no 2006/7.

45 United States of America v. Enaam M. Arnaout. United States District Court Northern District of Illinois, Eastern Division. Case #: 02 CR 892. <<http://www.justice.gov/usao/il/indict/2002/02cr892.pdf>>

46 United States of America v. Enaam M. Arnaout. United States District Court Northern District of Illinois, Eastern Division. Case #: 02 CR 892. <<http://www.justice.gov/usao/il/indict/2002/02cr892.pdf>>

47 United States of America v. Enaam M. Arnaout. United States District Court Northern District of Illinois, Eastern Division. Case #: 02 CR 892. <<http://www.justice.gov/usao/il/indict/2002/02cr892.pdf>>

48 "Government's Evidentiary Proffer Supporting the Admissibility of Co-Conspirator Statements." United States of America v. Enaam M. Arnaout. United States District Court Northern District of Illinois, Eastern Division. Case #: 02 CR 892. January 31, 2003. See also Evan F. Kohlmann, "The Role of Islamic Charities in International Terrorist Recruitment and Financing," *Danish Institute for International Studies*, Working Paper no 2006/7.

those charging Arnaout with providing al-Qaeda with financial support.⁴⁹ In August 2003, the court sentenced Arnaout to eleven years in prison for racketeering. The judge concluded that there was no support offered to prove that he had supported terrorism, although the prosecution team had raised suspicions.⁵⁰

As stated above, authorities raided BIF's Chicago office in December 2001 and froze its bank accounts.⁵¹ BIF was designated by the United States and Great Britain as a "financier of terrorism" on November 19, 2002, and Canada followed shortly after, on November 22.⁵² Reportedly, several officials of the charity moved to other charitable groups in the country, including the Muslim World League, after the Canadian offices were shut down.⁵³

3. Al Haramain Islamic Foundation

Connections between the al Haramain Islamic Foundation and terrorism were first exposed in 2002, after the arrest of Omar al-Farouq in Indonesia on June 5, 2002. al-Farouq, al-Qaeda's operational point man in Southeast Asia, told his interrogators that al-Qaeda operations in the region were funded through a branch of the Saudi-based al-Haramain Islamic Foundation. According to al-Farouq, "money was laundered through the foundation by donors from the Middle East." In January 2004, the United States and Saudi governments jointly designated the Indonesia, Kenya, Tanzanian and Pakistani branches of the charity and submitted their names to the UN 1267 Sanction Committee. That action was based on information that the offices "provided financial, material and logistical support to the Usama bin Laden's (UBL's) al-Qaida network and other terrorist organizations." Interestingly, the U.S. approach at the time aimed at designating only those branches of a charity most directly involved in terrorist activity. In a sign of the inherent risks of such a strategy, after just six months the U.S. and Saudi governments designated Aqeel al-Aqil, the former overall head of al-Haramain, along with an additional five al-Haramain offices in Afghanistan, Albania, Bangladesh, Ethiopia, and the Netherlands. Despite these actions, including the inclusion of several al-Haramain branches on the U.N. designation list, the U.S. Treasury reported in June 2008 that parts of the al-Haramain organization continued to operate and the charity's leadership had attempted to reconstitute the organization's operations. Treasury therefore issued a blanket designation of the entirety of the al-Haramain Islamic Foundation organization, including its Saudi-based headquarters, for providing financial and material support to al-Qaeda and other terrorist organizations.

4. Global Relief Foundation

The Global Relief Foundation (GRF), also known as Fondation Secours Mondial (FSM), was founded in 1992 as a "humanitarian relief" organization in Bridgeview, Illinois and conducted operations in 25 countries including Iraq, Pakistan, Bosnia, Kosovo, Somalia, Russia (Chechnya),

49 Stewart Bell, "Charity Funded Jihad Fighters: Founder of Canadian Branch of Benevolence International Diverted Money Intended for Orphans: Guilty Plea in U.S. Court," *National Post* (Canada), February 11, 2003.

50 John Mintz, "Head of Muslim Charity Sentenced; Ill. Man Diverted Funds to Militants; No Proof of Terror Link, Judge Says," *The Washington Post*, August 19, 2003.

51 "Treasury Designates Benevolence International Foundation and Related Entities as Financiers of Terrorism," US Department of Treasury, November 19, 2002, <<http://www.usisreas.gov/press/releases/p03632.htm>>

52 Stewart Bell, "Charity Funded Jihad Fighters: Founder of Canadian Branch of Benevolence International Diverted Money Intended for Orphans: Guilty Plea in U.S. Court," *National Post* (Canada), February 11, 2003.

53 Stewart Bell, "Charity Funded Jihad Fighters: Founder of Canadian Branch of Benevolence International Diverted Money Intended for Orphans: Guilty Plea in U.S. Court," *National Post* (Canada), February 11, 2003.

and Syria.⁵⁴ Over 90% of its funds were directed overseas. After a series of investigations by the FBI and the U.S. Treasury, it was determined that GRF and its officers and directors had connections to and had supported Osama bin Laden, al-Qaeda, and other known terrorist groups. GRF was also included on the United Nations 1267 Sanctions Committee's list of individuals and entities whose assets were frozen, according to UN Security Council Resolutions 1267 and 1390.⁵⁵

There are several GRF officers linked to terrorist organizations, such as Rabih Haddad, a co-founder of GRF and president of the organization throughout the 1990s. In the early 1990s, Haddad also worked for Makhtab al-Khidamat (MAK), or the Human Services Organization (HSO)⁵⁶ in Pakistan. In the 1980s, MAK was co-founded by Sheikh Abdullah Azzam and Osama bin Laden as a precursor to al-Qaeda. MAK provided monetary support to Afghan fighters in Pakistan and founded recruiting centers around the world. Haddad reportedly characterized Azzam as a "hero."⁵⁷ According to a 1996 CIA document on international Islamic charities tied to terrorist groups, MAK was tied to extremist Algerian groups, Afghan veterans, Ramzi Yousef (planner of the 1993 World Trade Center bombing), and Al-Gama'at al-Islamiyya, along with Osama bin Laden.⁵⁸ According to the document, "the former director of the Zagreb office of HSO and his deputy were both senior members of Algerian extremist groups" and "French police arrested the deputy for weapons smuggling in France in July 1994."⁵⁹ Moreover, "an Algerian national affiliated with HSO and a senior commander of the mujahedin, also Algerian, were preparing for an unspecified terrorist attack in Europe if Shaykh Umar Abd al-Rahman, then on trial in New York for complicity in the 1993 World Trade Center bombing, were convicted."⁶⁰

Members of both GRF and FSM were linked with Osama bin Laden's personal secretary, Wadih El-Hage, who played a prominent role in the 1998 U.S. embassy bombings in Kenya and Tanzania and who was convicted in 2001. El-Hage was often in contact with both GRF and al-Qaeda at the same time.⁶¹

A GRF pamphlet from 1995 reads: "God equated martyrdom through JIHAD with supplying funds for the JIHAD effort. All contributions should be mailed to: GRF."⁶² A GRF newsletter asked for donations "for God's cause – they [the Zakat funds] are disbursed for equipping the raiders, for the purchase of ammunition and food, and for their [the Mujahideen's] transportation so that they can raise God the Almighty's word . . . it is likely that the most important of disbursement of Zakat in our times is on the jihad for God's cause."⁶³

⁵⁴ Global Relief Foundation v. Qaail, 315 F.3d 748, 750 (7th Cir. 2002) <<http://www.uniset.ca/other/cs5015F3d748.html>>

⁵⁵ U.S. Department of the Treasury, "Treasury Department Statement Regarding the Designation of the Global Relief Foundation," October 18, 2002, <<http://www.treas.gov/press/releases/po3553.htm>>

⁵⁶ CIA document, 1996, <http://intelwire.egoplex.com/2006_11_21_exclusives.html>

⁵⁷ U.S. Treasury, "Statement Regarding Global Relief Foundation," October 18, 2002, <<http://www.treas.gov/press/releases/po3553.htm>>

⁵⁸ CIA document, 1996, <http://intelwire.egoplex.com/2006_11_21_exclusives.html>

⁵⁹ CIA document, 1996, <http://intelwire.egoplex.com/2006_11_21_exclusives.html>

⁶⁰ CIA document, 1996, <http://intelwire.egoplex.com/2006_11_21_exclusives.html>

⁶¹ Global Relief Foundation, Incorporated v. New York Times Company, Associated Press, American Broadcasting Companies, Incorporated, et al., 390 F.3d 973, (United States Court of Appeals, Seventh Circuit, 2003), <<http://www.uniset.ca/other/cs390F3d973.html>>; U.S. Treasury, "Statement Regarding Global Relief Foundation," October 18, 2002, <<http://www.treas.gov/press/releases/po3553.htm>>

⁶² U.S. Treasury, "Statement Regarding Global Relief Foundation," October 18, 2002, <<http://www.treas.gov/press/releases/po3553.htm>>

⁶³ U.S. Treasury, "Statement Regarding Global Relief Foundation," October 18, 2002, <<http://www.treas.gov/press/releases/po3553.htm>>

Moreover, GRF has distributed books and audio tapes praising armed jihad authored by Sheikh Abdullah Azzam. The titles of the tapes included "The international conspiracy against Jihad" and "The Jihad in its present stage." Despite Azzam's links to terrorist organizations, GRF has enthusiastically promoted Azzam's materials to the public: "His [Azzam's] theology is a sea, his words are jewels, and his thoughts are a light for those who are holding the smoldering embers. He lived the Jihad experiences of the 20th century in Afghanistan . . . and Palestine, and produced a new theory for saving the [Islamic] Nation from disgrace, shame, weakness, and submission to others."⁶⁴

In 1997, a set of photographs and negatives showing \$120,000 worth of communications equipment (which included radio transceivers, antennas, and power packs) were discovered in a dumpster outside of GRF's Illinois office.⁶⁵ It was determined that much of the communications equipment had been shipped to Chechnya.⁶⁶ The radio model in the photos was the same as one found in possession of an al Qaeda member under investigation for the 1998 U.S. embassy bombings in Kenya and Tanzania, and additionally was the same model used in a 1995 assassination attempt on Egyptian President Hosni Mubarak.⁶⁷

According to a U.S. Treasury statement, "Other photographs depict fighters armed with automatic rifles, a sand bagged bunker with a radio antenna mounted outside, and mutilated corpses with the name "KPI" (Kashmir Press International) printed alongside."⁶⁸ Another photograph of two corpses include a caption reading "Hizbul Mujahideen," a terrorist organization operating in Kashmir. On the back of the photograph was a note written in Arabic reading, "two martyrs killed by the Indian government."⁶⁹

According to the U.S. Treasury, GRF also received nearly \$19,000 from the Texas-based Holy Land Foundation, which the Treasury Department designated a terrorist organization for allegedly raising funds for Hamas.⁷⁰

The FBI investigative team concluded in 2000 that:

Although the majority of GRF funding goes toward legitimate relief operations, a significant percentage is diverted to fund extremist causes. Among the terrorist groups known to have links to the GRF are the Algerian Armed Islamic Group, the Egyptian Islamic Jihad, Gama'at Al Islamiya, and the Kashmiri Harakat Al-Jihad El-Islam, as well as the Al Qaeda organization of Usama Bin Laden. . . . In the past, GRF support to terrorists and other transnational mujahideen fighters has taken the form of purchase and shipment of large quantities of sophisticated communications equipment, provision of humanitarian cover documentation to

64 U.S. Treasury, "Statement Regarding Global Relief Foundation," October 18, 2002, <<http://www.treas.gov/press/releases/po3553.htm>>

65 U.S. Treasury, "Statement Regarding Global Relief Foundation," October 18, 2002, <<http://www.treas.gov/press/releases/po3553.htm>>

66 John Roth, Douglas Greenburg, and Serena Wille, "Monograph on Terrorist Financing," The National Commission on Terrorist Attacks upon the United States, pg. 93 <http://www.9-11commission.gov/staff_statements/911_TerrFin_Monograph.pdf>

67 Global Relief Foundation, Incorporated v. New York Times Company, Associated Press, American Broadcasting Companies, Incorporated, et al., 390 F.3d 973, (United States Court of Appeals, Seventh Circuit, 2003), <<http://www.usdoj.gov/other/cas/390F3d973.htm>>

68 U.S. Treasury, "Statement Regarding Global Relief Foundation," October 18, 2002, <<http://www.treas.gov/press/releases/po3553.htm>>

69 U.S. Treasury, "Statement Regarding Global Relief Foundation," October 18, 2002, <<http://www.treas.gov/press/releases/po3553.htm>>

70 U.S. Treasury, "Statement Regarding Global Relief Foundation," October 18, 2002, <<http://www.treas.gov/press/releases/po3553.htm>>

suspected terrorists and fund-raising for terrorist groups under the cover of humanitarian relief⁷¹

In 2002 a senior bin Laden financier named Mohammed Galeb Kalaje Zouaydi, was arrested in Europe. According to the Spanish Interior Ministry, Zouaydi transferred funds to several individuals linked to the bin Laden network, including more than \$200,000 to the head of the Global Relief office in Belgium, Nabil Sayadi (alias Abu Zeinab).⁷²

Also in 2002, Federal authorities broke up a cell in Portland, Oregon. The cell is alleged to have been founded by, among others, Sheik Mohamed Abdirahman, who had founded GRF along with Rabih Haddad.⁷³

In a 2003 deposition supporting the prosecution of the president of the American Muslim Foundation (AMF) and the Secretary of Success Foundation ("Success") Abdurahman Muhammad Alamoudi on charges of providing financial support to Hamas, Immigration and Customs Enforcement (ICE) special agent Brent Grentrup detailed the relationship between members of GRF's branch in Bosnia and an organization linked to Alamoudi. Alamoudi ultimately plead guilty in 2004 to separate charges of conducting illegal financial transactions with Libya, unlawful procurement of citizenship and impeding administration of the Internal Revenue Service, and for a role in a Libyan conspiracy to assassinate then-Saudi Crown Prince Abdullah.⁷⁴

In a section entitled "Support to Al Qaida," agent Grentrup describes how in addition to his positions within AMF and Success, Alamoudi was also a director of Taibah International Aid Association (TIAA), whose Bosnia branch was designated by Treasury in 2004. In a document seized during a March 2002 search of the offices of Success and AMF, entitled "Cooperation Agreement between Success Foundation and Taibah Charitable Foundation," it states that "Taibah Foundation will act as an agent for Success Foundation in executing its external projects."⁷⁵

ICE agent Grentrup's testimony further identifies several individuals who represented both Taibah and GRF in Bosnia. According to an interview with Taibah accountant Tarik El-Mastry on December 15, 2001, a co-worker named Mohammed El-Nagmy served concurrently as an employee of Taibah in Bosnia and as the Bosnian representative for GRF. El-Nagmy confirmed this himself in a separate interview also on December 15. According to the FBI Report of an interview conducted following a search of Taibah (Bosnia) in 2002, Mustafa Ait-Idir stated that "Taibah represented GRF's interests after the Bosnian government told it to cease operations." He also described how another Taibah employee, Mohammad Ibrahim assisted with GRF's Sarajevo operations.⁷⁶

71 John Roth, Douglas Greenberg, and Serena Wille, "Monograph on Terrorist Financing," The National Commission on Terrorist Attacks upon the United States, pg. 93. <http://www.9-11commission.gov/statements/911_TerFin_Monograph.pdf>

72 U.S. Department of the Treasury, "Additional Background Information on Charities Designated Under Executive Order 13224,"

<http://www.ustras.gov/offices/enforcement/key-issues/prototyping/charities_execorder_13224-c.shtml>

73 FBI Special Agent Mark A. McBride, Affidavit filed in Multnomah County Court, Oregon, August 2003.

74 United States of American v. Abdurahman Muhammad Alamoudi, United States District Court Eastern District of Virginia, Alexandria Division. Appeal from Case # 03-513-A. <http://www.nsfoundation.org/miscellaneous/FestwadDocs/US_v_Alamoudi_FilesAgreement.pdf>

75 United States of American v. Abdurahman Muhammad Alamoudi, United States District Court Eastern District of Virginia, Alexandria Division. Appeal from Case # 03-1009M. <http://www.nsfoundation.org/miscellaneous/US_v_Alamoudi_GrentrupHHI.pdf>

76 United States of American v. Abdurahman Muhammad Alamoudi, United States District Court Eastern District of Virginia, Alexandria Division. Appeal from Case # 03-1009M. <http://www.nsfoundation.org/miscellaneous/US_v_Alamoudi_GrentrupHHI.pdf>

In December 2001, federal officials raided the offices of the Global Relief Foundation (GRF) in Chicago and froze its assets.⁷⁷ On the same day, NATO forces raided GRF's offices in Kosovo after receiving credible intelligence information that the foundation was involved in planning attacks against U.S. and European targets.⁷⁸ According to Burr and Collins, during GRF's first ten years it collected approximately \$20 million and \$3.6 million in 2001 alone. It also appeared that GRF's main office was alerted by New York Times reporters of an impending FBI raid, enabling GRF officials to shred incriminating documents in advance of the raid.⁷⁹

In 2002, GRF founder Rabih Haddad was arrested though never formally charged and in 2003 was deported to Lebanon on the basis that he had overstayed his tourist visa.⁸⁰ In 2002, Federal authorities broke up a cell in Portland, Oregon. The cell was alleged to have been founded by, among others, Sheik Mohamed Abdurahman Kariye, who had founded GRF along with Rabih Haddad. An affidavit filed by FBI special agent Mark A. McBryde in 2003 related a recorded conversation between a member of the "Portland Seven," Jeffrey Battle and an unidentified cooperating witness. In the recording, Battle stated that Habis Abdullah Al Saoub, a cell member who was killed fighting Pakistani forces in 2003, had asked Kariye to help fund a trip by jihadists to Afghanistan. He continued, stating that "Kariye had provided to Al Saoub an amount of money sufficient to allow \$2000 to each of the travelers to Afghanistan. Battle stated that Kariye had acquired this money from members of the Masjid As Sabr [the mosque where Kariye served as Imam]."⁸¹

In a 2003 declaration in support of the detention for Abdurahman Muhammad Alamoudi, the president of the American Muslim Foundation (AMF) and the Secretary of Success Foundation ("Success"), Immigration and Customs Enforcement (ICE) special agent Brent Grentrop detailed the relationship between members of GRF's branch in Bosnia and an organization linked to Alamoudi.⁸² Alamoudi ultimately plead guilty in 2004 to separate charges of conducting illegal financial transactions with Libya, unlawful procurement of citizenship and impeding administration of the Internal Revenue Service, and for a role in a Libyan conspiracy to assassinate then-Saudi Crown Prince Abdullah.⁸³

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77 Philip Stenson, "A Nation Challenged: The Money Trail: F.B.I. Raids 2 of the Biggest Muslim Charities; Assets of One Are Seized," *The New York Times*, December 15, 2001.

78 David B. Ottaway, "Groups, U.S., Battle Over 'Global Terrorist' Label," *Washington Post*, November 14, 2004.

79 J. Millard Burr and Robert O. Collins, *Aims for Jihad*, Cambridge: Cambridge University Press, 2006.

80 Rachel L. Swarns, "Threats and Responses: A Michigan Case: U.S. Deports Charity Leader in Visa Dispute," *The New York Times*, July 16, 2003.

81 FBI Special Agent Mark A. McBryde, Affidavit filed in Multnomas County Court, Oregon, August 2003.

<http://www.investigativeproject.org/documents/ea2a_docs/1128.pdf>

82 United States of American v. Abdurahman Muhammad Alamoudi, United States District Court Eastern District of Virginia, Alexandria Division.

Appeal from Case # 03-1009M, <[http://www.ncfifoundation.org/miscellaneous/US_v_Alamoudi_Grentrop\[HH\].pdf](http://www.ncfifoundation.org/miscellaneous/US_v_Alamoudi_Grentrop[HH].pdf)>

83 United States of American v. Abdurahman Muhammad Alamoudi, United States District Court Eastern District of Virginia, Alexandria Division.

Appeal from Case # 03-1009M, <[http://www.ncfifoundation.org/miscellaneous/US_v_Alamoudi_Grentrop\[HH\].pdf](http://www.ncfifoundation.org/miscellaneous/US_v_Alamoudi_Grentrop[HH].pdf)>

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5. Islamic American Relief Agency

The Islamic African Relief Agency (IARA), also known as the Islamic Relief Agency (ISRA),⁸⁶ is a non-governmental organization.⁸⁷ The U.S. Department of the Treasury designated the IARA on October 13, 2004. IARA challenged this, but the court upheld the Treasury Department action, concluding that there was substantial evidence for the designation.⁸⁸ The IARA headquarters are located in Khartoum, Sudan, and the organization holds offices in the United States and in over forty countries around the world. Following Treasury's designation of the IARA, local authorities raided the charity's U.S. office in Columbia, Missouri, seizing several boxes and computers.⁸⁹ The IARA originally established its presence in the United States in 1985 under the name of "Islamic African Relief Agency, United States Affiliate," but later changed its name to "Islamic American Relief Agency" in 1999.⁹⁰

The IARA's senior officials, who were also designated and blocked by the U.S. Department of the Treasury, include Dr. Mohammed Ibrahim Sulaiman, the Secretary General in Khartoum; Jaffar Ahmad Abdullah Makki, the South Asia Region Director; Abdul Aziz Abbakar Muhamad, the Pakistan Director and former Afghanistan Director; Khalid Ahmad Jumah al-Sudani, the Middle East Regional Director; and Ibrahim Buisir, an IARA representative in Ireland.⁹¹

⁸⁴ United States of American v. Abdurahman Mahammad Alamoudi, United States District Court Eastern District of Virginia, Alexandria Division. Appeal from Case # 03-1009M, <http://www.ocfafoundation.org/miscellaneous/US_v_Alamoudi_Gentrup1111.pdf>

⁸⁵ United States of American v. Abdurahman Muhammad Alamoudi, United States District Court Eastern District of Virginia, Alexandria Division. Appeal from Case # 03-1009M, <http://www.ocfafoundation.org/miscellaneous/US_v_Alamoudi_Gentrup1111.pdf>

⁸⁶ U.S. Department of Justice, "Islamic Charity Charged with Terrorist Financing; Former U.S. Congressman Indicted for Money Laundering," January 16, 2008, <<http://kansascity.fbi.gov/doi/pressrel/pressrel08/terroristfinancing011608.htm>>

⁸⁷ U.S. Department of the Treasury, "Treasury Designates Global Network, Senior Officials of IARA for Supporting bin Laden, Others," October 13, 2004, <<http://www.ustreas.gov/press/releases/fr2025.htm>>

⁸⁸ Jimmy Gurule, *Unfunding Terror: The Legal Response to the Financing of Global Terrorism*, Cheltenham, UK: Edward Elgar Publishing Limited, 2008.

⁸⁹ Jennifer Myers, "Feds Raid Islamic Relief Agency," *Missourian*, October 14, 2004, <<http://www.columbia-missourian.com/stories/2004/10/14/feds-raid-islamic-relief-agency/>>

⁹⁰ U.S. Department of the Treasury, "Additional Information on Charities Designated Under Executive Order 13224," <http://www.ustreas.gov/offices/enforcement/ky-issues/protecting/charities_execorder_13224-j.shtml>

⁹¹ U.S. Department of the Treasury, "Treasury Designates Global Network, Senior Officials of IARA for Supporting bin Laden, Others," October 13, 2004, <<http://www.ustreas.gov/press/releases/fr2025.htm>>

In 2007, the IARA and five of the group's leaders were charged in a thirty-three count indictment with having violated U.S. sanctions against Iraq and providing over \$1.4 million to Iraq within the span of twelve years.⁹²

The original indictment also alleged that the U.S. office of the IARA stole \$85,000 from USAID and used a substantial portion of those funds to hire a lobbyist (who was a former congressman) to attempt to remove the group from the Senate Finance Committee's list of entities suspected of being involved in international terrorism.⁹³ This lobbyist, Mark Siljander, was indicted in the Western District of Missouri on January 16, 2008, for having assisted the IARA (which was charged in this case) in participating in "prohibited financial transactions for the benefit of U.S.-designated terrorist Gulbuddin Hekmatyar."⁹⁴

Maktab al-Khidamat (MK), a group financed and co-founded by Osama bin Laden, is affiliated with the IARA, and cooperated with it beginning in 1997. An IARA leader in Afghanistan joined with another MK leader in 2000 to fundraise in Sudan and subsequently raised over five million dollars for MK.⁹⁵ Other links between the IARA and Bin Laden include an IARA leader who assisted in finding a safe haven for Bin Laden.⁹⁶ The IARA, along with an institute controlled by Bin Laden, also participated in a program to assist Taliban fighters.⁹⁷

In one instance, the IARA's U.S. office publicly denied the membership of Ziyad Khaleel, an individual who bought the cell phone used by Osama bin Laden during his plotting of the 1998 embassy bombings in Kenya and Tanzania, although he was, indeed, a member of IARA-USA.⁹⁸

U.S. Treasury records also indicate that the IARA participated in the transport of funds to the Palestinian territories, which likely was to finance terrorist activities. In one Western European country, the IARA served as an intermediary to transport funds to Hamas. Some of the transported funds were raised in collection boxes labeled "Allah" and "Israel," which indicates that the money may have been used for attacks against Israelis. Additionally, the IARA has been linked to the Al-Aqsa Foundation in Belgium, a Specially Designated Global Terrorist organization.⁹⁹

⁹² Jacob Luecke, "Islamic Group Faces Charges," *Columbia Tribune*, March 8, 2007, <<http://archive.columbiantribune.com/2007/mar/20070308news012.asp>>

⁹³ Jacob Luecke, "Islamic Group Faces Charges," *Columbia Tribune*, March 8, 2007, <<http://archive.columbiantribune.com/2007/mar/20070308news012.asp>>

⁹⁴ U.S. Department of Justice, "Islamic Charity Charged with Terrorist Financing; Former U.S. Congressman Indicted for Money Laundering," January 16, 2008, <<http://www.usdoj.gov/pressrel/2008/08/08011608.htm>>

⁹⁵ U.S. Department of the Treasury, "Treasury Designates Global Network, Senior Officials of IARA for Supporting bin Laden, Others," October 13, 2004, <<http://www.ustreas.gov/press/releases/jr2025.htm>>

⁹⁶ U.S. Department of the Treasury, "Additional Information on Charities Designated Under Executive Order 13224," <http://www.treas.gov/offices/enforcement/key-issues/protecting/charities_execorder_13224-1.shtml>

⁹⁷ U.S. Department of the Treasury, "Treasury Designates Global Network, Senior Officials of IARA for Supporting bin Laden, Others," October 13, 2004, <<http://www.ustreas.gov/press/releases/jr2025.htm>>

⁹⁸ Jacob Luecke, "Islamic Group Faces Charges," *Columbia Tribune*, March 8, 2007, <<http://archive.columbiantribune.com/2007/mar/20070308news012.asp>>

⁹⁹ U.S. Department of the Treasury, "Additional Information on Charities Designated Under Executive Order 13224," <http://www.treas.gov/offices/enforcement/key-issues/protecting/charities_execorder_13224-1.shtml>; U.S. Department of the Treasury, "Treasury Designates Global Network, Senior Officials of IARA for Supporting bin Laden, Others," October 13, 2004, <<http://www.ustreas.gov/press/releases/jr2025.htm>>

According to the U.S. Department of the Treasury, "Information available to the U.S. shows that the overseas branches IARA provided hundreds of thousands of dollars to UBL in 1999. In 1997, there was an individual who acted as a liaison between UBL and terrorist-related NGOs, distributing funds from UBL to MK, IARA and others. Later that year, IARA and MK reportedly provided financial support for a group of Arab terrorists planning to travel to Saudi Arabia to conduct unspecified operations against U.S. military personnel."¹⁰⁰

The IARA (and all of its branches, global offices) remain designated by the U.S. Department of the Treasury. Local authorities raided and closed the IARA-USA office in Columbia, Missouri, following the Treasury designation.¹⁰¹

According to Jimmy Gurule, a law professor at Notre Dame Law School and a former Under Secretary for Enforcement at the U.S. Department of the Treasury, "as early as 2003, information to the U.S. showed that IARA was responsible for moving funds to the Palestinian territories for use in terrorist attacks by Hamas."¹⁰²

In January 2008, the Western District of Missouri charged the IARA-USA and several of its leaders with eight counts of money laundering and engagement in prohibited financial transactions in support of U.S.-designated terrorist Gulbuddin Hekmatyar, who is tied to al-Qaeda and the Taliban. According to the U.S. Department of Justice, based on "Counts Thirty-Four through Forty-One of the new indictment, IARA and Hamed [former Executive Director of IARA] knowingly and willfully engaged in financial transactions for the benefit of Hekmatyar's organization by sending approximately \$130,000 in 2003 and 2004 in numerous transactions to Islamic Relief Agency (ISRA) bank accounts in Peshawar, Pakistan, purportedly for an orphanage housed in buildings owned and controlled by Hekmatyar."¹⁰³

As mentioned above, the IARA and several of its members were charged in a 33-count indictment in March 2007 for violating sanctions placed on Iraq. In December 2009, Ahmad Mustafa, a fundraiser for IARA, pleaded guilty to "violating various laws, including federal economic sanctions, money laundering, theft of public money, impairing and impeding the Internal Revenue Service, prohibited transactions with a specially designated global terrorist, conspiracy, and obstruction of justice."¹⁰⁴ According to the U.S. Department of Justice press release of his plea, Mustafa raised funds on behalf of IARA throughout the United States and transferred these funds to Iraq by way of a Jordanian middleman, identified by U.S. Treasury as a Specially Designated Global Terrorist.¹⁰⁵

Additionally, Ali Mohamed Bagegni, a member of the IARA Board of Directors, pleaded guilty to similar charges in April 2010. According to the U.S. Department of Justice, "In entering his

¹⁰⁰ U.S. Department of the Treasury, "Treasury Designates Global Network, Senior Officials of IARA for Supporting bin Laden, Others," October 13, 2004, <<http://www.ustreas.gov/press/releases/fs2025.htm>>

¹⁰¹ Jennifer Myers, "Feds Raid Islamic Relief Agency," *Missourian*, October 14, 2004, <<http://www.columbiaindependant.com/stories/2004/10/14/feds-raid-islamic-relief-agency>>

¹⁰² Jimmy Gurule, *Unfunding Terror: The Legal Response to the Financing of Global Terrorism*, Cheltenham, UK: Edward Elgar Publishing Limited, 2008.

¹⁰³ U.S. Department of Justice, "Islamic Charity Charged with Terrorist Financing; Former U.S. Congressman Indicted for Money Laundering," January 16, 2008, <<http://kansascity.fbi.gov/dojpressrel/pressrel08/terroristfinancing011608.htm>>

¹⁰⁴ U.S. Department of Justice, "Columbia Man Pleads Guilty to Violating Federal Sanctions Against Iraq," December 16, 2009, <<http://kansascity.fbi.gov/dojpressrel/pressrel09/ke121609.htm>>

¹⁰⁵ U.S. Department of Justice, "Columbia Man Pleads Guilty to Violating Federal Sanctions Against Iraq," December 16, 2009, <<http://kansascity.fbi.gov/dojpressrel/pressrel09/ke121609.htm>>

guilty plea, Bagegni admitted to participating in the conspiracy to violate IEEPA between October 13, 2004, and November 9, 2006, during which time he knew or should have known that IARA had transferred money to Iraq, and falsely stated to government attorneys and agents that it had not been.¹⁰⁶ A trial for the remaining defendants is scheduled for July 2010.¹⁰⁷

6. Tamil Foundation

The Tamil Foundation was a Cumberland, Maryland-based charity designated by the Treasury Department on February 11, 2009 for providing support to the Liberation Tigers of Tamil Eelam (LTTE), the Sri Lankan terrorist group known as the Tamil Tigers. LTTE was originally designated as a Foreign Terrorist Organization (FTO) on October 8, 1997 and has been re-designated every two years since.¹⁰⁸ On November 2, 2001, LTTE was named an SDGT. Following the Tamil Foundation's designation, Adam Szubin, a Treasury official, noted that LTTE has "relied on so-called charities to raise funds and advance its violent aims."¹⁰⁹

The head of the Tamil Foundation was Dr. Nagaratnam A. Ranjithan, a kidney disease expert.¹¹⁰ Ranjithan was also president of the Tamils Rehabilitation Organization (TRO), an LTTE support charity named an SDGT on November 15, 2007. The two charities co-mingled funds prior to their designations and carried out financial activities in concert with one another. The Tamil Foundation and TRO were also linked through a donation-matching program.¹¹¹

7. Tamils Rehabilitation Organization (TRO)

The Tamils Rehabilitation Organization (TRO) served as a charitable front for LTTE fundraising and procurement and, as such, was designated an SDGT on November 15, 2007. TRO raised money for LTTE through individual representatives and, claim TRO sources, became LTTE's favored US-based fundraising front. Following the December 2004 tsunami, TRO collected humanitarian aid from international donors and filtered the funds to LTTE, which were used to improve LTTE's military capabilities. Treasury reported that, at LTTE's ordering, international NGOs which operated in LTTE territory were to direct funding to local NGOs, all of which were, in turn, managed by TRO. TRO's oversight of these local NGOs enabled TRO to divert international aid contributions to LTTE.¹¹² The head of TRO, Dr. Nagaratnam A. Ranjithan, also directed the Tamil Foundation. This enabled close coordination of TRO and Tamil Foundation

¹⁰⁶ U.S. Department of Justice, "Former Columbia Man Pleads Guilty to Violating Federal Sanctions Against Iraq," April 6, 2010,

<<http://knox.sci.fbi.gov/dojpressrel/pressrel10/040610.htm>>

¹⁰⁷ Brennan David, "IARA Inquiry Brings First Guilty Plea," December 16, 2009, <<http://www.columbian.bu.edu/news/2009/dec/16/defendant-pleads-guilty-islamic-charity-case/>>

¹⁰⁸ "The Sri Lankan Tamil Diaspora After the LTTE," Asia Report No. 186, February 23, 2010, pg. 6,

<<http://www.ericisgroup.org/~media/Files/asia/sohb-asis/ur-lanka/186%20The%20Sri%20Lanka%20Tamil%20Diaspora%20after%20the%20LTTE.pdf>>

¹⁰⁹ "Tamil Foundation's assets frozen," *Washington Times*, 11 February 2009.

¹¹⁰ "Tamil Foundation's assets frozen," *Washington Times*, 11 February 2009.

¹¹¹ U.S. Department of the Treasury, Terrorism and Financial Intelligence, "Key Issues: Protecting Charitable Organizations: Tamil Foundation,"

<http://www.ustreas.gov/offices/enforcement/key-issues/protecting/charities_execorder_13224-p.shtml#t>

¹¹² U.S. Department of the Treasury, Terrorism and Financial Intelligence, "Key Issues: Protecting Charitable Organizations: Tamils Rehabilitation Organization (TRO), (Sri Lanka)," <http://www.ustreas.gov/offices/enforcement/key-issues/protecting/charities_execorder_13224-pp.shtml#tamils>

financial activity, including a gift-matching program and co-mingled accounts.¹¹³ In addition to its U.S. activity, TRO also operated in seventeen other countries.¹¹⁴

8. KindHearts

According to Treasury, HLF official Muhammad el-Mezain, among the HLF defendants convicted in November, transferred his fund-raising skills to Kindhearts after the closure of HLF.¹¹⁵ Treasury reported that "Information indicates that SDGT Khalid Mishaal, Hamas' Secretary General based in Damascus, Syria, identified El-Mezain as the Hamas leader for the U.S. At the time, Mishaal advised that all financial contributions to Hamas from individuals in the U.S. should be channeled through El-Mezain."¹¹⁶

In a statement following the freezing of KindHearts' accounts in early 2006, Treasury noted that one of the founders of KindHearts, Khaled Smaili, had "founded KindHearts with the intent to succeed fund-raising efforts of both HLF and GRF, aiming for the new NGO to fill a void caused by the closures. KindHearts leaders and fund raisers once held leadership or other positions with HLF and GRF."¹¹⁷

- 5) **My understanding is that one of the charities, KindHearts, had its assets frozen in 2006 without a warrant and without probable cause. A federal judge ruled recently that this was improper. Could you please comment?**

Before the HLF trial, in 2006, the Treasury shut down Kindhearts, a Toledo, Ohio NGO, describing it as the progeny of HLF. Kindhearts was not fully designated as a terrorist entity at the time, but was subject to a Blocking Pending Investigation (BPI) action.¹¹⁸ In May 2007, the Treasury Department informed Kindhearts it was being provisionally designated a Specially Designated Global Terrorist entity (SDGT).¹¹⁹ Per U.S. District Judge James Carr's May 10, 2010 remedy order, the investigation is still pending.¹²⁰

Judge Carr ruled in 2009 that the actions of the Treasury were wrong in this case (to freeze Kindhearts' assets) not because the Department did not have sufficient evidence, but because it

113 U.S. Department of the Treasury, Terrorism and Financial Intelligence, "Key Issues: Protecting Charitable Organizations: Thrill Foundation," <http://www.usreitas.gov/offices/enforcement/key-issues/protecting/charities_execorder_13224-p.shtml#>

114 U.S. Department of the Treasury, "Treasury Targets U.S. Front for Sri Lankan Terrorist Organization," February 11, 2009, <<http://www.treasury.gov/press/releases/tg22.htm>>

115 U.S. Department of the Treasury, "Treasury Freezes Assets of Organization Tied to Hamas," February 19, 2006, <<http://www.oeas.gov/press/releases/j4058.htm>>

116 U.S. Department of the Treasury, "Treasury Freezes Assets of Organization Tied to Hamas," February 19, 2006, <<http://www.treas.gov/press/releases/j4058.htm>>

117 U.S. Department of the Treasury, "Treasury Freezes Assets of Organization Tied to Hamas," February 19, 2006, <<http://www.treas.gov/press/releases/j4058.htm>>

118 U.S. Department of Treasury, Office of Foreign Assets Control, "Recent OFAC Actions," February 19, 2006, <<http://www.usreitas.gov/offices/enforcement/ofac/actions/20060219.shtml>>

119 Chief Judge James G. Carr found that "OFAC violated the Fourth Amendment claim when it seized plaintiff's assets without probable cause and prior judicial review and issuance of a warrant for such seizure" and ordered a status/scheduling conference be set for September 21, 2009. See *KindHearts for Charitable Humanitarian Development, Inc. v. Geithner et al.*, August 18, 2009, <http://www.schn.org/files/pdfs/natsec/kindhearts/geithner_order.pdf>

120 James Carr, *KindHearts for Charitable Humanitarian Development, Inc., Plaintiff v. Timothy Geithner, et al., Defendants*, Order, May 10, 2010, <http://www.charityandsecurity.org/system/files/Remedy%20Order%20KH_0.pdf>

gave the organization no warning about the freeze and did not obtain a probable cause warrant.¹²¹ The judge's criticism, therefore, has been misinterpreted. The judge did not object to the underlying evidence supporting Kindhearts' closure or asset freeze; only the procedure under which this was carried out. To be sure, a Blocking Pending Investigation (BPI) should logically lead to a timely full-fledged designation of the entity in question or the release of its assets. Failure to do so is what the court rightly took issue with.

- 6) **Has the Obama administration applied the current rules to shut down any charities or freeze any charitable assets? Do you have any reason to believe that the Treasury Department has changed its approach on this issue under the Obama administration?**

The U.S. government has been consistent in its efforts to crack down on the abuse of the charitable sector by terrorist organizations, including under the Obama administration. The Treasury Department follows the evidence and intelligence it receives and makes informed decisions based on these and other policy and legal considerations. That was the case under the previous administration and remains the case today under the Obama administration.

In none of the cases in question was U.S. government action capricious or based on sparse, dated, or unreliable information. The designation process in particular is appropriately robust, vigorous, and errs on the side of caution. Designated entities can and do appeal their designations, and the Treasury Department has a record of lifting designations when warranted. It should be clear that charities and international aid organizations come to this problem set from a noble and well-intentioned perspective focused on the need to highlight opportunities to facilitate quick, efficient, and timely aid. Thankfully, promoting opportunities for charitable giving and reducing the risk those opportunities are abused for illicit purposes are in no way mutually exclusive goals.

- 7) **Are these charitable organizations not entitled to due process of law? Perhaps the desire to act quickly and freeze assets is understandable, but shouldn't these organizations have an opportunity to be heard and be able to present evidence in their defense? What are the due process requirements?**

Organizations that are designated as terrorist groups can and do appeal their status, and the Treasury Department has lifted the label, and its accompanying restrictions, when warranted.¹²²

The designation of the Holy Land Foundation is a good example. The government produced a seven volume, 3,130 page administrative record to support that administrative action, which the District court determined – and the appellate court affirmed – “provides substantial support for [Treasury's] determination that HLF acts for or on behalf of Hamas.” And the court was able to consider evidence that the foundation submitted to Treasury in its defense as well. In fact, the court specifically noted that the Treasury Department “did include in the record a significant portion of [Holy Land Foundation's] evidence challenging [Treasury's] factual determination.” The court also noted that Holy Land “was afforded an opportunity to submit further evidence to [Treasury], but failed to do so.” Strangely, while the Holy Land Foundation had the opportunity to be heard and present evidence in its defense it failed to do so.

¹²¹ “Judge: U.S. Wrong to Freeze Charity's Assets,” Associated Press, August 20, 2009, <<http://www.msnbc.msn.com/id/32494347/>>

¹²² Dr. Matthew Levitt, “Charities Need to Raise Their Defenses against Exploitation by Terrorists,” Chronicle of Philanthropy, June 13, 2010, <<http://washingtoninstitute.org/templateCO6.php?CID=1477>>

8) Is charitable giving that seeks to fight poverty in Muslim-majority countries able to reach the people who need help? Or does federal law create a chilling effect on donations occur, whereby American Muslims become less likely to donate?

Federal law may indeed create some form of a chilling effect on donations. Public misunderstanding of the government's public response to terrorists' abuse of charities has deterred some donors, especially Muslim Americans, from giving.

The problem, however, is that much of the chill on donations is the result of misinformation. A small, unintentional mistake will not land a donor in the government's cross hairs. Greater due diligence on the part of nonprofit organizations, combined with government outreach and information campaigns, would go a long way toward resolving this problem.¹²³

9) Please describe what precisely occurs procedurally and practically after assets of a charitable organization are frozen. Is there an appeal process?

Designated entities have the opportunity to appeal to the U.S. courts, and have done so in the past.

10) Do we have any accurate data on what portion of terrorist financing comes from American charities?

No, we do not have data on what portion of terrorist financing comes from or through American charities, but all parties in the international system have a responsibility to prevent their jurisdictions from being abused by terrorists or other illicit actors. Whatever the precise percentage, it is likely not static given the constantly evolving nature of terror financing.

¹²³ Dr. Matthew Levitt, "Charities Need to Raise Their Defenses against Exploitation by Terrorists," *Chronicle of Philanthropy*, June 13, 2010. <http://www.philanthropyinstitute.org/template.asp?CID=1477>