

A REVIEW OF CURRENT AND EVOLVING TRENDS IN TERRORISM FINANCING

**Written Testimony Submitted to the House Committee on Financial
Services, Subcommittee on Oversight and Investigations**

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Chairman Moore, Ranking Member Biggert, and distinguished Members of the Committee: thank you for holding today's hearing for "A Review of Current and Evolving Trends in Terrorism Financing." My name is Stephen I. Landman, and I am the Director of National Security Law and Policy at the Investigative Project on Terrorism (IPT). I am honored to speak before you today, and hope that the work we have done at the IPT will be useful as this committee looks to combat the evolving threat of terrorist financing.

In the past decade, the speed with which the United States has developed, implemented, and fine-tuned a national counter-terrorist financing strategy has been nothing if not impressive. To date, the government has convicted over 420 terrorism suspects, with many of these cases relying upon evidence of terrorist financing. Financially, terrorist groups from al Qaida in the Arabian Peninsula (AQAP) to Hamas in the Gaza Strip and al-Shabaab in Somalia are on the ropes. By one account, al Qaida is in the "worst financial shape it has been in years."¹

Despite these successes, much work remains to be done. Foreign Terrorist Organizations (FTOs)² continue to raise and move money for the purposes of recruitment, indoctrination, logistical support, training, and for their murderous acts. In part, this is due to the fact that terrorist financing—the provision of something of value to persons or groups engaged in terrorist activity—is exceedingly difficult to track. Like the terrorist groups themselves, terrorist financing crosses both geographic borders and technological boundaries.

The topic of today's hearing is monumentally important. In the ongoing effort to combat terrorism, the ability to keep money out of the coffers of these groups not only means the difference between a group undertaking an attack or not, but may have an impact on the long-term viability of the organization. Effectively responding to this threat requires a two-pronged approach: (i) understanding the means by which terrorist organizations raise money, and (ii) identifying the methods by which they move money around the globe to fund acts of violence. My testimony today, while touching upon the first issue, will deal primarily with the movement of funds. I would ask that the Committee consider this an extension of earlier testimony provided to Congress by the IPT's Executive Director, Steven Emerson.³

American-based operatives of terrorist groups have increasingly turned to criminal endeavors to finance their murderous actions. Whether through drug trafficking,⁴ organized retail theft and black

¹ *Assistant Secretary for Terrorist Financing David S. Cohen, Remarks to the Washington Institute for Near East Policy*, U.S. Dep't of the Treasury (April 7, 2010) available at <http://www.ustreas.gov/press/releases/tg632.htm>.

² For the purposes of my testimony the term "terrorist organization" refers to those entities and individuals designated by the United States government as either a "Foreign Terrorist Organization" (FTO) or "Specially Designated Global Terrorist" (SDGT). See *Specially Designated Nationals and Blocked Persons*, United States Department of Treasury: Office of Foreign Assets Control, available at <http://www.treas.gov/offices/enforcement/ofac/sdn/t11sdn.pdf> (compilation of all U.S. designation lists) (last updated September 10, 2010).

³ See *Money Laundering and Terror Financing Issues in the Middle East: Hearing before the S. Comm. On Banking, Housing, and Urban Affairs* (July 13, 2005) (Statement of Steven Emerson, Executive Director, The Investigative Project on Terrorism) available at <http://www.investigativeproject.org/documents/testimony/19.pdf>.

⁴ See e.g., *Fact Sheet: Dawood Ibrahim*, United States Department of the Treasury, available at http://www.ustreas.gov/press/releases/reports/fact_sheet.pdf.

market smuggling,⁵ the production and sale of counterfeit name-brand goods,⁶ or car theft rings,⁷ terrorists have demonstrated that they are willing and able to resort to the types of activities normally reserved for ordinary street gangs for financial support. U.S. law enforcement has and should continue to stop these activities with the same tried and true techniques that it has always relied upon to combat illicit financial activity. Those efforts, however, must be accompanied by measures aimed at preventing the actual flow of money supporting terrorism.

The United States and its international partners have effectively closed off the formal financial sector to terrorist groups. Through a combination of criminal prosecutions, regulatory enforcement, and civil litigation, traditional banking methods are no longer open to terrorist dollars. But these actions have not stopped the movement of funds by terrorist groups and their financial supporters. Instead, like water on concrete, terrorist dollars have found the cracks.

Terrorist groups have fallen back on traditional methods of financing their activities. As they did a decade ago, terrorists continue to abuse the charitable sector by raising funds under the guise of zakat (Islamic tithing) and surreptitiously funnel money to terrorist groups around the world. While this is most brazenly seen today in the form of British-based Viva Palestina's support for Hamas, we have recently seen Somalia-based al-Shabaab and Pakistan-based Lashkar-e Tayyiba do the same. Relying upon the extensive and largely unregulated hawalanetwork in the United States,⁸ terrorist groups are believed to have secretly funneled hundreds of thousands of dollars over the last decade; demonstrated most recently by the September 2010 arrest of Mohammad Younis for using the technique to transfer money to Faisal Shahzad, the failed Times Square bomber.

Rather than simply rest on their laurels, terrorist groups have shown an incredible ability to adapt and apply changing technologies to their needs and stay one step ahead of our regulatory and law enforcement officers. The creation of Stored Value Cards (SVCs) and the expansion of the Internet are just two of the problems that those tasked with countering terrorist financing will face over the next decade.

I. KEEPING THE FORMAL FINANCIAL SECTOR CLOSED TO TERRORIST DOLLARS

Since 2001, the United States and its international partners have effectively closed off the formal financial sector to terrorist groups. Through a combination of criminal prosecution, regulatory enforcement, and civil litigation, traditional banking methods are no longer open to terrorist dollars.

⁵ See e.g., *Leader of Organized Retail Theft Ring Convicted*, U.S. Dep't of Justice (April 6, 2004) available at http://web.archive.org/web/20051106025523/http://www.usdoj.gov/usao/txn/PressRel04/ghali_convict_pr.html.

⁶ See e.g., *Id.*

⁷ See e.g., *United States v. Amawi*, Superseding Indictment (Feb. 27, 2007) available at <http://www.investigativeproject.org/case/105>.

⁸ *Hawala* is an underground "ancient banking system originating, and still used widely in the Middle East and Southeast Asia" See *Hawala and Underground Terrorist Financing Mechanisms: Hearing Before the S. Subcomm. On Int'l Trade and Fin*, 107th Cong. 45-49 (2001) (statement of Patrick Jost, SRA International). See also *Terrorist Financing Typologies Report*, Financial Action Task Force, at 21 (Feb. 29, 2008) available at <http://www.fatf-gafi.org/dataoecd/28/43/40285899.pdf> (explaining that terrorists exploit *hawala* and other alternative remittance systems in order to move money).

However, as I will discuss, there are still significant gaps that must be improved upon to truly make the formal financial sector off limits to terrorist organizations.

A. Regulating Formal Financial Institutions

Five years ago, Barry Sabin, then head of the Counterterrorism Section at the Department of Justice told the Senate Judiciary Committee that in order to ensure continued survival, “terrorists need to raise funds, open and use bank accounts, and transfer money.”⁹ Since that time, in concert with the Department of the Treasury, the Justice Department has implemented a comprehensive enforcement scheme. Although the government has not obtained a single conviction against financial institutions for terrorist financing, regulatory efforts have been both robust and effective.

At the forefront of the regulatory reforms were the amendments to the Bank Secrecy Act that accompanied the USA PATRIOT Act.¹⁰ The updated rules and regulations have increased exponentially the breadth and depth of financial intelligence available to law enforcement officials. Today, through Currency Transaction Reports (CTRs), Cross Border Currency and Monetary Instrument Reports (CMIRs), and Suspicious Activity Reports (SARs), investigators can effectively undertake both reactive and proactive terror finance investigations.¹¹ Two recent examples of the applicability of these tools are the criminal prosecutions of Abdurahman Alamoudi and Pete Seda.

In 2004, Alamoudi, the former head of the American Muslim Council, pled guilty to illegal financial dealings with Libya to his involvement in a plot to assassinate then Crown Prince Abdullah of Saudi Arabia.¹² The investigation, which was triggered in part by Alamoudi’s failure to file a CMIR, resulted in his receiving a 23-year prison sentence. Pleading guilty, Alamoudi admitted that he had provided hundreds of thousands of dollars to men who had been hired by the Libyan government to assassinate Crown Prince Abdullah.¹³

Earlier this month, a jury in Eugene, Oregon convicted Pete Seda, the former head of the U.S. branch of al Haramain Islamic Foundation of conspiring to move money out of the United States without declaring it, and with filing false tax returns to hide the fact that the money ever existed.¹⁴ According to evidence presented at his trial, Seda accepted a large donation intended to support “our Muslim brothers in Chychnia,” [sic] and then surreptitiously shifted the money to Saudi Arabia in the form of difficult to trace traveler’s checks. Seda’s co-conspirator, Soliman al-Buthe, a Specially Designated Global Terrorist, failed to file a CMIR on his way from New York to Saudi Arabia.¹⁵

⁹ *A Review of the Material Support to Terrorism Prohibition: Hearing Before the S. Comm. on the Judiciary*, 109th Cong. (April 20, 2005) (statement of Barry Sabin, Chief, Counterterrorism Section of the Criminal Division, Department of Justice).

¹⁰ United and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. No. 107-56, 115 Stat. 272.

¹¹ See generally *Bank Secrecy Act Forms and Filing Requirements*, Financial Crimes Enforcement Network, available at http://www.fincen.gov/forms/bsa_forms/.

¹² *United States v. Alamoudi*, Plea Agreement (E.D.Va. 2004) available at http://www.investigativeproject.org/documents/case_docs/167.pdf.

¹³ *United States v. Alamoudi*, Statement of Facts (E.D.Va 2004) available at http://www.investigativeproject.org/documents/case_docs/220.pdf.

¹⁴ *Defendant Convicted of Lying About Funds Bound for Religious Extremist Militants*, Department of Justice (Sept. 10, 2010) available at <http://portland.fbi.gov/dojpressrel/pressrel10/pd091010.htm>

¹⁵ *Id.*

While the cases against Seda and Alamoudi are representative of the effectiveness of these expanded reporting and recordkeeping requirements, they are not exhaustive. Rather, they are in addition to presumably countless investigations that were triggered by the filings of CTRs and SARs.

The result of these extensive reporting requirements has been a more secure financial system. Recognizing the central role bankers play in inhibiting terrorist financing, and the difficulty associated with monitoring individual transactions to determine the final destination of otherwise innocuous funds, financial institutions have implemented these more rigid oversight systems.¹⁶

Despite these successes, more can and should be done to increase cooperation between law enforcement and the private sector. Although the idea has been proposed in the past, I would urge the Committee to consider working to increase information sharing with banks by granting bankers access to classified records. The inherent risks in such a proposal are obvious, but through careful monitoring I believe such a move would increase the effectiveness of terror finance investigations.

B. Holding Banks Liable for Terrorist Financing

While the Executive branch has cracked down on terror finance through increased regulatory enforcement, there have been parallel efforts undertaken in federal courts by American citizens injured in foreign terrorist attacks.¹⁷ Relying on the Anti Terrorism Act of 1990 (ATA), these plaintiffs have looked to courts to hold accountable those individuals and entities that make acts of international terrorism possible.¹⁸ Although these lawsuits remain in their infancy—at least in the legal sense that in most cases they have not progressed past discovery—the future effectiveness of similar suits is at risk due to judicial interpretations of statutory provisions.

The plain language of the “material support” statute proscribes the provision of “financial services” to FTOs.¹⁹ While intuitively, this may be a clear and unambiguous term, it has been the subject of much debate at district courts litigating the ATA claims of victims of terrorism. In a string of lawsuits filed in New York and the District of Columbia, courts were tasked with interpreting the scope of “financial services” as applied to financial institutions.²⁰ In each case, the institutions responded to charges that they acted as bankers to terrorist groups by contending that they were simply providing “routine banking services,” conduct that they argued was not covered by the

16. See, Joseph M. Myers, *The Silent Struggle Against Terrorist Financing*, 6 GEO. J. INT’L AFF. 33, 35 (2005) (“The financial services sector, which had previously opposed many of the PATRIOT Act provisions, was extraordinary cooperative and patient with the United States and other countries trying to unravel the financial trail left by the 9/11 hijackers”).

17. See e.g., *In re Terrorist Attacks on September 11, 2001*, 349 F. Supp. 2d 765, 780 (S.D.N.Y. 2005); *Linde v. Arab Bank*, 384 F. Supp. 2d 571 (E.D.N.Y. 2005); and *Weiss v. National Westminster Bank PLC*, 453 F. Supp. 2d 609 (E.D.N.Y. 2006). See also Jennifer A. Rosenfeld, *The Antiterrorism Act of 1990: Bringing International Terrorists to Justice the American Way*, 15 Suffolk Transnational Law Journal 726 (Spring 1992) (discussing attempts by American citizens to file private lawsuits against terrorist groups, and the effect that the Anti-Terrorism Act of 1990 had on those efforts).

18. The Anti Terrorism Act of 1990, 18 U.S.C. § 2333 (2002).

19. 18 U.S.C. 2339A(b)(1).

20. See e.g., *In re Terrorist Attacks*, 349 F. Supp. 2d 765; *Linde*, 384 F. Supp. 2d 571; and *Weiss*, 453 F. Supp. 2d 609.

statute.²¹ And while most courts have properly rejected this argument as purely semantics, this is an area where statutory authority can be easily amended for clarity.

In bringing their claims under the ATA, victims of terrorism alleged that a number of financial institutions should be held liable for providing “financial services” to foreign terrorist organizations in violation of the material support statutes. Arguably the most insidious of the allegations involving banks were those made in *Linde v. Arab Bank*, which claimed that the financial institution had conspired to finance terrorist groups by knowingly administering what amounted to a “death insurance plan” for the families of suicide bombers in Israel.²² On approximately October 16, 2000, the *Saudi Committee in Support of the Intifada al Quds* (Saudi Committee) was established as a private charity registered with the Kingdom of Saudi Arabia, whose purpose was to support the second Palestinian *Intifada*. According to the complaint, in furtherance of this goal, Arab Bank in consultation with the *Saudi Committee* publicly announced plans to pay out 20,000 Saudi Riyals (the equivalent of about USD \$5,316) to the families of terrorists killed or captured by the Israeli Defense Forces during the *Intifada*.

The maintenance of the “death insurance plan” was relatively straightforward. Following a terrorist attack, the Arab Bank and or the *Saudi Committee* would be provided the names and personal information of the individuals who were responsible. The financial institution, in consultation with the *Saudi Committee* and local representatives of Hamas and other terrorist groups, would then compile a finalized database of persons eligible for payments. The family of the terrorist could then present the bank with a death certificate and a transfer would be made to the family’s account. According to plaintiffs, the *Saudi Committee* paid death benefits to the families of at least 200 “martyrs” in the first year of its existence.

While it may be clear that running a “death insurance plan” is the type of activity that would inculcate a financial institution, what about more benign practices? In *In re Terrorist Attacks on September 11, 2001*, family members of victims of the September 11 attacks filed a class action lawsuit under the ATA claiming that over two hundred defendants directly or indirectly provided material support to Osama bin Laden and the al Qaida terrorists.²³ Among the financial institutions sued were al Rajhi Bank, Saudi American Bank, Arab Bank, and Al Baraka Investment & Development Corporation. Although each bank was alleged to have provided specific services, the general claim was that all of the banking defendants had “provided essential support to the al Qaida organization and operations.”²⁴ The court granted the defendant banks’ motions to dismiss, explaining that there is “no basis for a bank’s liability for injuries funded by money passing through it on routine banking business.”²⁵ It is simply inexcusable to allow financial institutions that solicited and transferred funds to terrorist groups to continue operating on the grounds that their support was “routine.”

As the recent Supreme Court decision *Holder v. Humanitarian Law Project* concluded, the material support law was meant to cast a wide net over the types of support and services that keep terrorist organizations functioning. While it seems clear that Congress did not intend to incorporate an

²¹ See e.g., *Weiss*, 453 F. Supp.2d at 624 (defining “routine banking services” as “opening and maintaining bank accounts, collecting funds, transmitting funds, and providing merchant account credit card services”).

²² *Linde v. Arab Bank*, 384 F. Supp. 2d 571 (E.D.N.Y. 2005).

²³ *In re Terrorist Attacks*, 349 F. Supp. 2d at 780.

²⁴ *Id.* at 831.

²⁵ *Id.* at 833.

exception for the provision of “routine” services to terrorist groups, these cases reveal a potential weakness in future enforcement of the statute. Efforts to amend the statute and explicitly reject this attempt to narrow the interpretation of “financial services,” should be taken up immediately. To paraphrase one court interpreting the statute, there is nothing routine about the provision of financial services to a terrorist group.²⁶

II. TRADITIONAL TERRORIST FINANCING METHODS

Despite the United States’ successes at limiting the access of the formal financial sector to terrorist groups, terror financing has not completely abated. FTOs continue to utilize long-established schemes to finance their existence and operations, including abuse of the charitable sector and informal value transfer systems such as hawala.

A. Abuse of the Charitable Sector

Perhaps one of the most common methods by which terrorist groups have and continue to raise and move money is through the abuse of the charitable sector. And while the case of the *Holy Land Foundation* is certainly the most public example of a charity being hijacked to finance terrorist operations, “charities” continue to funnel money to Hamas, al-Shabaab, and others under the guise of “humanitarian assistance.”

1. Hamas has and continues to raise funds under the guise of “humanitarian efforts”

By now, the illegal activities of the Holy Land Foundation for Relief and Development (HLF) have been well documented. In 2004, HLF was charged with serving as the U.S. fundraising arm for Hamas. The Richardson, Texas-based charity funneled over \$12 million to Hamas under the guise of “humanitarian relief efforts.” Four years later, a federal jury convicted five former officials for providing financial assistance that was used to build Hamas-run schools, to recruit suicide bombers, and to compensate the families of “martyrs.”

U.S. District Judge Jorge Solis sentenced former HLF Chief Executive Officer Shukri Abu Baker and co-founder Ghassan Elashi to 65 years in prison. Longtime HLF chairman, Mohamed el-Mezain, who was convicted on one count of conspiring to provide material support to terrorists, received the maximum 15-year sentence. Explaining the sentence, Judge Solis said “the purpose of creating the Holy Land Foundation was as a fundraising arm for Hamas.”

With HLF shut down and the curtain pulled back on Hamas’ abuse of the charitable sector, this FTO has had to look to other “charities” to finance its vicious crackdown on the Palestinian territories. Taking the lead has been Viva Palestina (VP).

VP, a British-based “charity” with an American branch, was established in January 2009, with the expressed purpose of providing “humanitarian assistance” to the Palestinian people. But despite this laudatory mission statement, the organization has openly used its resources to prop up the terrorist organization’s government in the Gaza Strip. During a March 2009 Hamas rally in Gaza City

²⁶ See, *Linde*, 384 F. Supp. 2d 571.

attended by leaders from Hamas and VP, George Galloway, the head of VP handed a bag full of cash to Hamas Prime Minister Ismail Haniyeh and announced:

“We are giving you now 100 vehicles and all of the contents, and we make no apology for what I am about to say: We are giving them to the elected government of Palestine [Hamas]. Just in case the British government or the European Union want to face me in any court, let me tell them live on television: I personally am about to break the sanctions on the elected government of Palestine. Many of my friends have to give their cash to charities. By Allah, we carried a lot of cash here. You thought we were all fat. We are not fat. This is money that we have around our waists. And we have to give this... Some of my friends have to give this money to charities, and they will do this in private later this evening, because they need receipts and it's not practical to do it here.”

“But I, now, here, on behalf of myself, my sister Yvonne Ridley, and the two Respect councilors – Muhammad Ishtiaq and Naim Khan – are giving three cars and £25,000 in cash to Prime Minister Ismail Haniyeh. Here is the money. *This is not charity. This is politics.*”²⁷

While primarily operating out of the United Kingdom, VP conducts fundraising efforts in the United States where the organization benefits from neither corporate nor charitable status. In order to ensure these funds—which will inevitably make their way into the hands of Hamas—remain tax deductible, VP has partnered with the Interreligious Foundation for Community Organizations/Pastors for Peace (IFCO), a recognized 501(c)(3) organization. Explaining this arrangement, Galloway said:

“You can do it online, we will not be crossing into Gaza until the 13th. Any penny you can send between now and then, which incidentally is not coming to us but to the respected Christian organization, Pastors for Peace, who are our sponsors, no breaking of the law here, all US laws have been observed here, and complied with here.”²⁸

Over the past two years, VP has continued to flout U.S. terror-financing laws, raising over \$200,000 for “humanitarian efforts” at events in Dallas, Texas;²⁹ Houston, Texas;³⁰ Orlando, Florida;³¹ Brooklyn, New York;³² Washington D.C.;³³ Boston, Massachusetts;³⁴ and Overland Park, Kansas;³⁵

²⁷ *British MP George Galloway Defies International Sanctions Against Hamas and Compares Tony Blair to Caligula's Horse*, al-Jazeera TV (Qatar) (March 8-9, 2009) available at <http://www.memritv.org/clip/en/2060.htm> (emphasis added).

²⁸ *Viva Palestina: A Lifeline from the United States to Gaza*, Fundraiser at American University (Washington, D.C., June 28, 2009).

²⁹ See *Gaza Solidarity Day Event in Dallas, Texas*, YouTube (June 15, 2009) available at <http://www.youtube.com/watch?v=YY3Vo7g29p4>.

³⁰ See *George Galloway Speech in Houston*, YouTube (June 16, 2009) available at <http://www.youtube.com/watch?v=mMILGEoVQaQ> (In this video, Mahdi Bray, Executive Director of Muslim American Society-Freedom Foundation, suggests that donors route money through MAS).

³¹ See *Busted: Orlando Mosque Finances Hamas Fundraiser*, YouTube (June 14, 2010) available at <http://www.youtube.com/watch?v=f-HIQQMUrLc>.

³² See *Join George Galloway in Brooklyn in an Evening for Gaza*, Al-Awda NY ((Jan. 31, 2010) available at http://www.al-awdany.org/newsite/index.php?option=com_content&view=article&id=81:the-siege-continues-the-struggle-goes-on-the-honorable-george-galloway&catid=1:events&Itemid=2.

³³ See *George Galloway Champions a Free Palestine*, YouTube (June 28, 2009) available at <http://www.youtube.com/watch?v=93DEUvpSchM>.

among others. And while the American branch of VP denies that it provides financial support to Hamas, there is overwhelming evidence that the organization has donated funds raised on American soil to a non-governmental organization tied to a designated Hamas support entity.

VP-USA has said that the donations from its July 2009 convoy to Gaza were were “given to a non-governmental consortium in Gaza called Expertise in Consulting and Development (CODE), which was, in turn, responsible for distributing the aid in a manner consistent with our goals, as well as with the community’s needs.”³⁶ CODE, however, has received significant funding from the Union of Good, an organization headed by Qatar-based Muslim Brotherhood spiritual advisor, Yusuf al-Qaradawi, and designated in 2008 by the Treasury Department as an organization created by Hamas to “transfer funds to the terrorist organization.” As the Treasury announcement noted:

“in addition to providing cover for Hamas financial transfers, some of the funds transferred by the Union of Good have compensated Hamas terrorists by providing payments to the families of suicide bombers.”³⁷

The third “convoy” undertaken by VP arrived in Gaza in January of this year and raised funds at events in both the United States and the United Kingdom. In Britain, VP officially partnered with the Palestine Solidarity Campaign (PSC) whose stated mission includes campaigning for “the right of return of the Palestinian people,” and opposing “racism, including anti-Jewish prejudice and the apartheid and Zionist nature of the Israeli state.”³⁸ PSC has also rebutted the “myth” that “Hamas is an illegal terrorist organization bent on Israel’s destruction,” claiming instead that “Hamas is a nationalist, Islamist organization consisting of political party, with a military wing, which for years was largely responsible for running hospitals and schools in Gaza, in a situation of military occupation.”³⁹

Another major partner of VP during its third convoy was Foundation for Human Rights and Freedoms and Humanitarian Relief (IHH), the Turkish organization behind the deadly May flotilla raid in the Mediterranean Sea. While the raid remains under investigation by the United Nations, Israeli intelligence officials have confirmed that IHH planned the violent encounter with the Israeli Defense Forces prior to embarking on the flotilla, and that seven out of the nine men killed expressed their desires to die as martyrs.⁴⁰ The U.S. government has already recognized IHH’s ties to Hamas, with the State Department reportedly debating designating the organization as a Specially

³⁴ See *Protesting George Galloway in Boston*, YouTube (Feb. 1, 2010) available at http://www.youtube.com/watch?v=FJeI_yJyRDk&feature=related.

³⁵ See *103,000 pledged to Palestinian relief; largest event of its type in Kansas or Missouri*, Citizens for Justice in the Middle East (July 5, 2009) available at <http://www.cjme.org/newsrelease-viva-palestina-benefit3.htm>.

³⁶ *Viva Palestina Addresses Concerns*, Viva Palestina-USA (Oct. 31, 2009) available at <http://www.investigativeproject.org/documents/misc/389.pdf>.

³⁷ *Treasury Designates Union of Good*, United States Department of the Treasury (Nov. 12, 2008) available at <http://treas.gov/press/releases/hp1267.htm>.

³⁸ *PSC Aims*, Palestine Solidarity Campaign, available at ³⁸ *PSC Aims*, Palestine Solidarity Campaign, available at http://www.palestinecampaign.org/Index5b.asp?m_id=1&l1_id=2&l2_id=10.

³⁹ *The Truth About Gaza*, Palestine Solidarity Campaign, available at ³⁹ *The Truth About Gaza*, Palestine Solidarity Campaign, available at <http://www.palestinecampaign.org/files/FAQ%20Gaza%20sheet%20final.pdf>.

⁴⁰ See *Video Statements from Mavi Marmara Crew Members about Preparations Made by IHH Operatives for the Violent Confrontation with IDF Soldiers*, Intelligence and Terrorism Information Center (June 9, 2010) available at http://www.terrorism-info.org.il/malam_multimedia/English/eng_n/html/hamas_e112.htm.

Designated Global Terrorist.⁴¹ VP is currently en route to Gaza for its fifth land convoy, and has once again partnered with IHH.

Despite compelling evidence that VP and its American partners are raising and providing money to Hamas, a designated FTO, the organization continues to operate largely unimpeded in the United States. And while the risks posed by VP's continuing operation are grave, as recent investigations demonstrate, Hamas does not maintain a monopoly on the abuse of the charitable sector for the financing of terrorism.

2. *Abuse of the charitable sector is not limited to Hamas*

American authorities have uncovered an extensive support network in the United States for Somali-based al Qaida affiliate, al-Shabaab. In August of 2010, federal prosecutors released an indictment charging 14 people with providing money, services, and personnel to al-Shabaab.⁴² While the case is ongoing, court records provide incredible insight into the lengths to which al-Shabaab's supporters have gone to funnel money to the terrorist group in Somalia.

Two of those indicted—Amina Farah Ali and Hawo Mohamed Hassan—of Rochester, Minnesota, stand accused of raising funds for the group while claiming it was for humanitarian purposes. According to public records, Ali and Hassan lied to both local media and law enforcement officials about the ultimate destination of the finances they were raising. In July 2009, they told FBI agents that they were only interested in providing “suffering people” in Somalia with food, clothing, and shelter.⁴³ Similarly, prior to her arrest, Ali told Minneapolis Public Radio that she sent money and “mails shipments of donated clothing to penniless refugees who are scrambling to escape the violence of her homeland.” Declaring it was “my duty to help out the Somali poor people who left everything behind,” Ali said she would never support any group that would carry out violent attacks in Somalia or the United States.

The indictment unsealed against the women paints a very different picture. It alleges that the pair raised money for al-Shabaab through door-to-door solicitation in Rochester, Minneapolis, and elsewhere in the United States and Canada. It states that on October 26, 2008, Ali hosted an al-Shabaab fundraising teleconference in which a co-conspirator “told the listeners that it was not time to help the poor and needy in Somalia; rather, the priority was to give to the mujahidin [holy warriors].”⁴⁴

Ali was involved in collecting funds from people who pledged money in the Minneapolis-St. Paul area. In January 2009, she allegedly directed an unindicted co-conspirator to “always collect in the name of the poor” so the funds could go to the mujahidin. On other occasions, she directed colleagues to send the funds in order to conceal that the money was going to al-Shabaab.

⁴¹ *Press Briefing*, United States Dep't of State (July 7, 2010) available at <http://www.state.gov/r/pa/prs/dpb/2010/07/144116.htm>.

⁴² *Fourteen Charged with Providing Material Support to Somalia-based terrorist organization al-Shabaab*, U.S. Dep't of Justice (Aug. 5, 2010) available at http://www.investigativeproject.org/documents/case_docs/1360.pdf.

⁴³ *United States v. Ali*, Indictment (D. Minn. Aug. 2010) available at http://www.investigativeproject.org/documents/case_docs/1355.pdf.

⁴⁴ *Minneapolis Somalis Played Key Role in al-Shabaab Investigation*, IPT News (Aug. 6, 2010) available at <http://www.investigativeproject.org/2092/minneapolis-somalis-played-key-role-in-al-shabaab>.

At the Investigative Project on Terrorism, we have been carefully following al-Shabaab fundraising activities in North America for some time. From interviews with community residents in Minneapolis, our organization learned that the recent indictments only confirmed what many local Somalis had long suspected: that al-Shabaab operatives have been raising money from them under the false pretense by “playing the victim card.”⁴⁵

3. *Refining efforts to protect the charitable sector*

Each of these cases is demonstrative of the fact that terrorist groups continue to abuse the charitable sector by raising funds under the guise of “humanitarian efforts.” Recognizing these abuses, it is important to redouble efforts to ensure the sanctity of the charitable sector. While law enforcement officials have made tremendous strides in protecting the charitable sector from abuse, more can and must be done. Existing statutory authorities must be protected from attempts to weaken their effectiveness, and officials should expand enforcement of existing laws.

Critics of American efforts at countering terrorist financing frequently argue that some terrorist groups maintain both charitable and militant wings, and that while support to the militant wing should be proscribed, it should be legal to provide “humanitarian assistance.” While these critics have had limited success in convincing federal courts of these efforts, they were dealt a major blow in *Holder v. Humanitarian Law Project*. Prior to the ruling, critics of the material support law had argued that:

“Allowing charities to provide humanitarian aid to individuals trapped in conflict zones in the Middle East and Central Asia, for example, would go a long way towards countering negative perceptions of America....Requiring a showing of specific intent to support illegal act prevents squandering limited prosecutorial resources on pro-peace charities such as the Humanitarian Law Project.”⁴⁶

This argument was roundly rejected by the majority of the Court, with Justice Antonin Scalia explaining: “The theory of the legislation is that when you aid any of their enterprises, you’re aiding the organization. Hamas, for example, gained support among—among the Palestinians by activities that are perfectly lawful, perhaps running hospitals, all sorts of things.”⁴⁷

Having failed to convince the Supreme Court that the law itself was unconstitutional, challengers have promised to seek legislative amendments that would allow for humanitarian aid. Such efforts would have the effect of dramatically undermining efforts at keeping money out of the hands of terrorists, and should be rejected if and when they arise. “Humanitarian assistance,” to the charitable, social service, and educational activities provided by FTOs can be just as dangerous as weapons.

⁴⁵ *See Id.*

⁴⁶ Sahar Aziz, *Protecting Speech, Preserving Charity: Why the High Court Should Refine “Material Support” Provision*, American Constitution Society (April 2, 2010) available at <http://www.americanconstitutionsociety.org/node/15739>.

⁴⁷ *Holder v. Humanitarian Law Project*, Oral Arguments, at 17 (U.S., Feb. 23, 2010) available at http://www.supremecourt.gov/oral_arguments/argument_transcripts/08-1498.pdf.

In addition to rejecting efforts to water down the material support statute, steps should be taken to expand current enforcement of terror-finance laws as they apply to charitable institutions. The IRS must expand its review and verification of information provided in applications for charitable status; increase the frequency of audits of charitable filings; and impose stiffer sanctions for noncompliance. To assist in these efforts, more manpower should be allocated, with an effort made to draw upon the skills of criminal investigators.

Finally, with regards to Viva Palestina, efforts must be made to investigate the organization and its U.S. branch partners. Representative Brad Sherman (D-CA) urged the Justice Department, the IRS, and the Secretary of State to investigate whether Viva Palestina is raising money for Hamas in December, 2009. Similarly, in January of 2010, in a letter sent to the Treasury Secretary, Timothy Geithner, Representative Sue Myrick (R-NC) stated that the Treasury Department should designate VP under Executive Order 13224 for its support of Hamas. These efforts should be supported to ensure that money doesn't continue flowing to Hamas under the guise of humanitarian assistance.

B. Continuing Failure to Regulate Hawalas

Another tried and true method of moving terrorist finances has been underground banking. Since terrorist organizations can no longer safely use the international banking system, terrorist financiers have turned to these underground banking systems, specifically hawala. Although one obvious benefit of hawala for terrorist financiers is that it operates outside the bounds of the traditional financial system, there are many other reasons why hawala may be preferred to ordinary banks. They are reliable, efficient, anonymous, and available 24 hours a day, seven days a week.

The true extent of terrorist use of these systems is unknown, a result of both the criminal nature of the activity and the lack of systematic data collection and analysis.⁴⁸ Estimates regarding the annual flow of transactions through informal banking systems range from “tens of billions” to \$200 billion.⁴⁹

Groups like al Qaida have systematically used hawala because, unlike formal financial institutions, they neither were traditionally subject to potential government oversight nor did they keep detailed records.⁵⁰ Evidence shows “the hawala network has been used to funnel money to terrorist groups in the disputed Kashmir valley . . . [and] as a conduit for funding the 1998 bombings of U.S. embassies in Kenya and Tanzania.”⁵¹ Even more recently, reports have now surfaced that the failed Times Square bombing was financed, at least in part, through hawala transactions.

⁴⁸ See U.S. GEN. ACCOUNTING OFFICE, TERRORIST FINANCING: U.S. AGENCIES SHOULD SYSTEMATICALLY ASSESS TERRORIST? USE OF ALTERNATIVE FINANCING MECHANISMS, at 3 (2003) *available at* <http://www.gao.gov/new.items/d04163.pdf> (“[The FBI] do[es] not systematically collect and analyze data on alternative financing mechanisms.”).

⁴⁹ *Id.* at 24.

⁵⁰ See JOHN ROTH, DOUGLAS GREENBURG & SERANA WILLE, NAT'L COMM'N ON TERRORIST ATTACKS UPON THE U.S., MONOGRAPH ON TERRORIST FINANCING, at 25 *available at* http://www.9-11commission.gov/staff_statements/911_TerrFin_Monograph.pdf.

⁵¹ Alan Lambert, *Underground Banking and Financing of Terrorism*, 15 FLA. J. INT'L L. 3, 12 (2002) (emphasis added).

Immediately following the failed bombing in Manhattan, investigators began unraveling the money trail to identify co-conspirators in the attack planned and financed by Tehrik-e-Taliban Pakistan (the Pakistani Taliban). As part of that investigation, questioning of Faisal Shahzad hinted that the plot had been funded through hawala. On September 15, prosecutors announced they had arrested and charged Mohammad Younis with helping finance the attack by serving as a hawaladar.⁵² Prosecutors say Younis had engaged in unlicensed hawala transactions with Shahzad. Younis has been charged with the operation of an unlicensed money transfer business between the United States and Pakistan.

As the investigation into the failed Times Square bombing shows, the use of hawala remains a viable method for movement of terrorist finances. And while expanded application of Bank Secrecy Act reporting and recordkeeping requirements to hawala was a strong first step, the statute must be more aggressively enforced. Younis' prosecution is a reminder of the importance of financial investigations as part of a broader counterterrorism policy. Every terrorism investigation should include a concomitant terror-finance component.

III. POTENTIAL FOR ABUSE OF DEVELOPING TECHNOLOGIES

As I've explained, the United States has undertaken extensive efforts aimed at curbing the abuse of the formal and "traditional" informal financial networks. And yet, one need only open a newspaper to see that groups such as al Qaida, Hizballah, Hamas, and their ilk still retain the ability to effectively plan, finance, and carry out attacks. This is due, at least in part, to the fact that rather than simply rest on their laurels, terrorist groups have shown an incredible ability to adapt changing technologies to their needs and stay one step ahead of our regulatory and law enforcement officers. The creation of Stored Value Cards (SVCs) and the expansion of the Internet are just two of the problems that those tasked with countering terrorist financing will face over the next decade.

As a word of caution, in this area, we are largely talking about *suspected* vulnerability, rather than *demonstrated* vulnerabilities. But, as the title of today's hearing suggests, we must review the *evolving* nature of the threat.

A. Stored Value Cards

Historically, if a terrorist group wanted to move large sums of money from one location to another, they would need to rely upon the methods we have already discussed or resort to techniques like bulk cash smuggling. Increased recordkeeping and reporting requirements have made those all risky ventures. Technology, however, has now made bulk cash smuggling easier in the form of stored value cards (SVCs).

As the Treasury Department has explained, SVCs are "smart cards with electronic value....The technology eliminates coin, currency, scrip, vouchers, money orders, and other labor-intensive payment mechanisms."⁵³ Similar to gift cards, SVCs can be obtained in a variety of locations, often

⁵² *Manhattan U.S. Attorney Charges Long Island Man with Engaging in Hawala Activity that Funded Attempted Times Square Bombing*, United States Attorney for the Southern District of New York (Sept. 15, 2010) available at http://www.investigativeproject.org/documents/case_docs/1375.pdf.

⁵³ See *Stored Value Cards*, United States Department of the Treasury, available at <http://www.fms.treas.gov/storedvalue/>.

without verification of identities, making them ideal as conduits for the global movement of funds. The implications of this development in terms of terror financing and our government's ability to combat it are simply daunting. This threat is exacerbated by the fact that while the Treasury Department is currently reviewing these new products, SVCs are not currently considered “monetary instruments” for reporting and recordkeeping purposes.

Under the current anti-money laundering and counter-terrorist financing regime, individuals must file Currency and Monetary Instrument Reports (CMIRs), whenever transporting, mailing, or shipping over \$10,000 in “monetary instruments.”⁵⁴ Covered instruments include: (i) coin or currency of the United States or of any other country, (ii) traveler’s checks in any form, (iii) negotiable instruments including checks, promissory notes, and money orders) in bearer form, endorsed without restriction, made out to a fictitious payee, or otherwise in such form that title thereto passes upon delivery; (iv) incomplete instruments (including checks, promissory notes, and money orders) that are signed but on which the name of the payee has been omitted, and (v) securities or stock in bearer form or otherwise in such form that title thereto passes upon delivery.⁵⁵

SVCs are not covered under this regime, and as demonstrated by a recent case, that could be a glaring blind spot in preventing terrorists from moving money across international borders. In September 2010, a federal court in Eugene, Oregon found Pete Seda, the founder of al Haramain Islamic Foundation, guilty of conspiring to move money out of the United States without declaring it, and with filing false tax returns to hide the fact that the money ever existed.

According to federal officials, Seda accepted a large donation intended to support “our Muslim brothers in Chychnia,” [sic] and then surreptitiously shifted the money to Saudi Arabia in the form of difficult to trace traveler’s checks. Seda’s co-conspirator, Soliman al-Buthe, a Specially Designated Global Terrorist, took the funds in the form of traveler’s checks and traveled from JFK International Airport in New York City to Riyadh, Saudi Arabia, failing to declare the money before leaving. Because traveler’s checks were covered by the statute and considered reportable “monetary instruments,” al-Buthe committed a federal crime the moment he failed to report the money. Had he been traveling with \$150,000 in SVCs rather than traveler’s checks, he would not have been criminally liable.

The exclusion of SVCs as reportable “monetary instruments” is the result of financial instruments developing faster than financial regulations. And while to date there hasn’t been a reported case of terrorist groups utilizing these instruments, the Treasury Department should act fast to plug this gap before terrorist financiers take advantage of it.

B. The Virtualization of Terrorist Financing

More worrisome than the occasional new financial instrument or method of transferring money, the Internet has the potential to revolutionize the process of terrorist financing. It has already been utilized to expand nearly every facet of FTO operations, from the spread of propaganda, to the planning and preparation of attacks; and as law enforcement continues to identify existing methods of financing, terrorist groups will likely adapt by exploiting many of the attributes for which the

⁵⁴ See FinCEN form 105, available at http://www.fincen.gov/forms/files/fin105_cmir.pdf.

⁵⁵ See FinCEN form 105, available at http://www.fincen.gov/forms/files/fin105_cmir.pdf.

Internet has become so popular—its ease of access, fast flow of information, anonymity of communications, and dearth of regulations.

Of particular concern, should be virtual worlds, which have the capacity to serve as the hawala of the 21st century. They provide many of the same characteristics as the existing IVTS networks: they are fast, inexpensive, reliable, convenient, and—most notably—discreet. Moreover, financiers no longer need to leave the comfort of their own homes to successfully transfer large sums of money to those looking to carry out horrific attacks. The development of virtual economies, along with the dearth of regulation, makes virtual worlds the new frontier in IVTS.

The ability to conduct real-time, in-world transactions in virtual currency that can then be exchanged for U.S. Dollars or other regional currencies has made virtual worlds widely popular. Virtual worlds allow users to transfer real funds in a variety of ways, including credit cards, traditional bank accounts, pre-paid debit cards, and PayPal accounts. Despite the obvious benefits of an expanding virtual economy, officials must acknowledge that this economy is no different than the real-world economy when it comes to financial crime. Virtual worlds are especially susceptible to manipulation by terrorist financiers because they escape regulation and observation by law enforcement.

The primary concern is paltry customer identification rules associated with virtual worlds. In traditional banking, customer identification procedures are implemented both during account origination and in subsequent transactions.⁵⁶ However, the nature of virtual worlds limits the ability to accurately identify customers at each of these stages, rendering all customers more vulnerable to financial crimes.

Virtual worlds are also limited in their ability to monitor individual financial transactions. Residents can buy, sell, and exchange currency in nearly unlimited amounts without any questions asked. Moreover, once a resident seeks to move funds from the virtual world and back into the real world, there are limits on the ability to properly identify the recipient of those funds.

Although a number of companies running virtual worlds have taken action to regulate their websites, it has largely been on an ad-hoc basis. Consequently, existing regulations must be updated to curb the future potential for abuse as new sites develop. Bringing virtual worlds under the umbrella of institutions covered by the Bank Secrecy Act would be the most effective. Consequently, I would recommend the following:

- *Declare Virtual Worlds with economies to be “money services businesses,” and require registration with the Treasury Department.* The present interpretation of MSB includes “any person doing business, whether or not on a regular basis or as an organized business, which engaged in the transfer of funds.”⁵⁷
- *Implement know-your-customer procedures within virtual worlds as required of other MSBs under the*

⁵⁶ FED. FIN. INST. EXAMINATION COUNCIL, AUTHENTICATION IN AN INTERNET BANKING ENVIRONMENT 4 (Oct. 12, 2005), *available at*

http://www.ffiec.gov/ffiecinfobase/resources/info_sec/2006/occ-bul_2005-35.pdf (“[C]ustomer identity verification during account origination . . . is important to reducing the risk of identity theft, fraudulent account applications, and unenforceable account agreements or transactions”).

⁵⁷ 31 C.F.R. § 103.11(uu)(5) (2008) (defining “Money Transmitters”).

⁵⁸ Such compliance programs are required of brick-and-mortar financial institutions and, while admittedly more complicated, expanding them to virtual worlds will reduce criminal abuse of these systems. Like their brick-and-mortar counterparts, virtual worlds must ensure that every avatar with virtual currency can be linked back to a verifiable name, address, and real-world bank account.

These customer identification and verification procedures, while potentially costly and time-consuming, are a necessary expense for virtual worlds looking to profit from the spread of their economies. Although this is a developing area of regulation, traditional banks implemented similar programs when shifting to online banking.⁵⁹ Once existing BSA regulations are expanded to cover virtual worlds, law enforcement and intelligence officials can begin cracking down on one of the last remaining methods for transferring funds without any recordkeeping or reporting requirements being triggered.

IV. CONCLUDING THOUGHTS AND RECOMMENDATIONS

We have come a long way since September 24, 2001, when President George W. Bush launched the first crackdown of terrorist finances in the form of Executive Order 13224.⁶⁰ Former President Bush laid out the mission ahead in very stark terms: “you are with us or you are with the terrorists. And if you are with the terrorists, you will face the consequences.”⁶¹ True to that mission, American efforts to disrupt terrorist financing schemes have put organizations such as *al Qaida* in dire financial straits. These successes, however, have been tempered by continuing blind-spots in the enforcement of existing regulations and an inability to update current laws at pace with technological advancements.

A review of the current and evolving threat posed by terrorist financing suggests that Congress should take the following actions:

- Increase cooperation between law enforcement and the private sector by granting bankers limited access to classified records .
- Refine the term “financial services” in 18 U.S.C. § 2339A(b)(1) to include “routine banking services,” affirming that there is nothing “routine” about supporting terrorism.

⁵⁸ See U.S. DEP'T OF THE TREASURY, FINANCIAL CRIMES ENFORCEMENT NETWORK, MONEY SERVICES BUSINESSES REGISTRATION FACT SHEET n. 1, available at <http://www.msb.gov/pdf/FinCENfactsheet.pdf> (last visited Jan. 25, 2009).

⁵⁹ See generally FED. FIN. INST. EXAMINATION COUNCIL, AUTHENTICATION IN AN INTERNET BANKING ENVIRONMENT (Oct. 12, 2005), www.ffiec.gov/pdf/authentication_guidance.pdf (discussing the rise in online banking and the application of the BSA requirements to such new technology).

⁶⁰ President George W. Bush, *President Freezes Terrorists' Assets: Remarks by the President, Secretary of the Treasury O'Neill, and Secretary of State Powell on Executive Order 13224*, The Rose Garden, The White House (Sept. 24, 2001).

⁶¹ Exec. Order No. 13,224, *Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism*, (2001). See also President George W. Bush, *President Announces Crackdown on Terrorist Financial Network, Remarks by the President in Announcement on Financial Aspects of Terrorism Financial Crimes Enforcement Network*, Vienna, VA (Nov. 7, 2001)

- Recognize that there is no distinction between the political and militant “wings” of terrorist group, and resist any efforts—in the form of a “humanitarian exception”—to water down the “material support” statute.
- Ensure the sanctity of the charitable sector by expanding audit proceedings to ensure that terrorist groups do not hijack charities.
- Investigate Viva Palestina and its American partners for their role in funneling money to Hamas in violation of federal law.
- Expand enforcement of 18 U.S.C. § 1960, and ensure that any and all individuals operating as hawaladars be registered.
- Insure that technology doesn’t make it easier for terrorists to move money by finding Stored Value Cards (SVCs) to be “monetary instruments” subject to reporting and recordkeeping requirements.
- Stay one step ahead of terrorist financiers by declaring virtual worlds with real world economies to be “money services businesses” for purposes of Bank Secrecy Act regulations.

Many of the recommendations proposed today will be neither easy nor popular. But that doesn’t mean they cannot assist in combating terror financing. Admittedly, we will never get this 100% right. Anybody that comes to this Committee and says that there is a fool-proof counter-terrorist financing program in place is simply being disingenuous. But despite the successes that have been registered in starving terrorists of money, more can and needs to be done.

Chairman Moore, Ranking Member Biggert, thank you very much for inviting me to testify before you today, and I look forward to your questions about this critical issue.