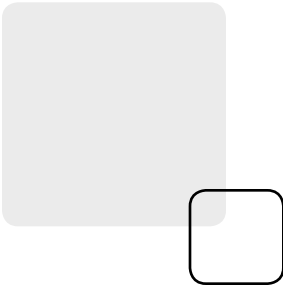




Muslim Charities and the War on Terror

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.

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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

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

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.”

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.

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.

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.

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 Iftikhar, 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 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

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.

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 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 IIEPA 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 Arnaout, 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 Arnaout 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 Missouriian*, 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 Missouriian* reported that the FBI told the state, Hamed is not a “concern.” (FBI reportedly finds Hamed not a ‘concern,’ *The Missouriian*, Oct. 24, 2004.) State official Tim Daniel told *The Missouriian* 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 Snowe 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.

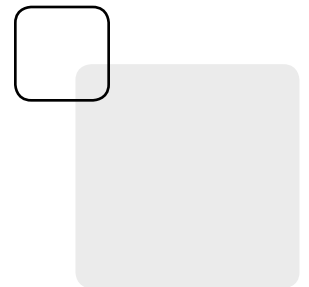
Islamic Society of North America (ISNA)

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.

