

Blocking Faith, Freezing Charity

CHILLING MUSLIM CHARITABLE GIVING

in the "WAR ON TERRORISM FINANCING"



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FRONT COVER PHOTOGRAPH: Alex Wong/Getty Images

Members of a Muslim congregation in Virginia give Zakat donations for the needy before they enter a mosque for a service to mark the conclusion of the holy month of Ramadan, the height of annual Muslim charitable giving. Zakat is one of the core “five pillars” of Islam and a religious obligation for all observant Muslims.

BACK COVER PHOTOGRAPHS:

LEFT: Brandon Dill/Memphis Commercial Appeal

RIGHT: LIFE for Relief and Development

THE AMERICAN CIVIL LIBERTIES UNION is the nation’s premier guardian of liberty, working daily in courts, legislatures and communities to defend and preserve the individual rights and freedoms guaranteed by the Constitution, the laws and treaties of the United States.

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Glossary

ACHR:	American Convention on Human Rights
ADC:	American-Arab Anti-Discrimination Committee
AEDPA:	Antiterrorism and Effective Death Penalty Act
AHIF:	Al Haramain Islamic Foundation-USA
APA:	Administrative Procedures Act
BIF:	Benevolence International Foundation
CAIR:	Coalition on American-Islamic Relations
CERD:	International Convention on the Elimination of All Forms of Racial Discrimination
FBI:	Federal Bureau of Investigation
FISA:	Foreign Intelligence Surveillance Act
FTO:	Foreign Terrorist Organization
GAO:	Government Accountability Office
GCO:	Goodwill Charitable Organization
GRF:	Global Relief Foundation
HLF:	Holy Land Foundation for Relief and Development
IARA:	Islamic American Relief Agency-USA
ICCPR:	International Covenant on Civil and Political Rights
ICRC:	International Committee of the Red Cross
IEEPA:	International Emergency Economic Powers Act
INA:	Immigration and Nationality Act
IRS:	Internal Revenue Service
IRTPA:	Intelligence Reform and Terrorism Prevention Act
ISNA:	Islamic Society of North America
JTTF:	Department of Justice Joint Terrorism Task Force
LIFE:	Life for Relief and Development
LTTE:	Liberation Tigers of Tamil Eelam
MPAC:	Muslim Public Affairs Council
NAIT:	North American Islamic Trust
NGO:	Non-governmental organization
OFAC:	Department of Treasury Office of Foreign Assets Control
OIG:	Department of Justice Office of the Inspector General
PKK:	Kurdistan Workers' Party
RFRA:	Religious Freedom Restoration Act
SDGT:	Specially Designated Global Terrorist
SDN:	Specially Designated Nationals and Blocked Persons
SDT:	Specially Designated Terrorist
TFFC:	Department of Treasury Office of Terrorist Financing and Financial Crimes
TWEA:	Trading with the Enemy Act
UCC:	Unindicted co-conspirator
UDHR:	Universal Declaration of Human Rights
UN:	United Nations
USAID:	United States Agency for International Development

I.

Executive Summary and Introduction

a. Introduction

On September 24, 2001, President George W. Bush announced in the White House Rose Garden that, in “a strike on the financial foundation of the global terror network,” he had taken executive action, without consulting Congress, to expand the Treasury Department’s unilateral authority to freeze the assets of organizations it considered terrorist organizations. He declared, “Just to show you how insidious these terrorists are, they oftentimes use nice-sounding, non-governmental organizations as fronts for their activities. We have targeted three such NGOs. We intend to deal with them, just like we intend to deal with others who aid and abet terrorist organizations.”¹ Federal authorities announced they were investigating over 30 Muslim charities.²

Within the space of ten days in December 2001, the federal government froze the assets of the three largest Muslim charities in the United States—the Holy Land Foundation for Relief and Development, Global Relief Foundation, and Benevolence International Foundation—effectively shutting each of them down. The government seized these charities’ assets during the Muslim holy month of Ramadan, at the height of annual Muslim charitable giving. These charities, which had been operating without incident for years—and for over a decade in the case of the Holy Land Foundation—were not on any government watch list before their assets were frozen. Indeed, before it was shut down the Holy Land Foundation had made repeated requests to government officials for assistance in complying with the law, only to be rebuffed.

The government’s actions against these three charities were the start of a pattern of conduct that violated the fundamental rights of American Muslim charities and has chilled American Muslims’ charitable giving in accordance with their faith, seriously undermining American values of due process and commitment to First Amendment freedoms.

Without notice, and through the use of secret evidence and non-transparent procedures, the Department of the Treasury has closed six U.S.-based, American Muslim charities to date by designating them as terrorist organizations. The consequences of designation include the seizure and freezing of all financial and tangible assets, as well as significant civil and criminal penalties. The federal government has closed down a seventh U.S.-based, American Muslim charity by declaring the charity to be “under investigation” and freezing all its assets. In addition, at least six American Muslim charities have been raided. Although these six charities have not been designated as terrorist organizations or had their assets frozen pursuant to a Treasury Department blocking order, they have

Today, the Treasury Department has virtually unchecked power to designate groups as terrorist organizations. Terrorism financing laws are overly broad and lack procedural safeguards that would protect American charities against government mistake and abuse.

suffered as a result of publicly announced investigations, law enforcement raids, and intrusive surveillance; two of these charities have closed. In total, and as a result of these federal government actions, nine Muslim charities have been shut down in Texas, Michigan, Missouri, Illinois, Oregon, Ohio, Massachusetts, and New York.

Although the need to ensure that humanitarian aid and charitable donations are not diverted to support terrorism is a real and valid concern, both the terrorism financing laws and the government's interpretation of them raise serious constitutional and human rights concerns. The terrorism financing laws provide executive branch officials with practically unfettered discretion in target-

permit the Treasury Department to seize all assets of charities "pending investigation," pursuant only to a blocking order signed by a mid-level Treasury Department official.

Independent government studies of counterterrorism policies and court cases have exposed flaws in the evidence the Treasury Department relies on in exercising its designation power. In an independent review of terrorism financing laws, the Government Accountability Office (GAO) found that there is a lack of accountability for Treasury's designation and asset blocking.³ According to the 9/11 Commission staff, Treasury officials acknowledged that in the post-9/11 period, "some of the evidentiary foundations for the early designations were quite weak" and the haste to designate charities after 9/11 "might [have] result[ed] in a high level of false designations."⁴

Despite the often weak nature of the evidence, when it designated Muslim charities, indicted them criminally, or raided them, the Bush administration publicly trumpeted its actions as successes and made inflammatory and unfounded or exaggerated allegations about the charitable sector's connections to terrorism financing. The effect of these government actions is to create a general climate in which law-abiding American Muslims fear making charitable donations in accordance with their religious beliefs. Other specific federal law enforcement practices, including widespread interviews of Muslim donors about their donations without evidence of wrongdoing, also intimidate American Muslims about their right to make charitable donations.

The government's actions have chilled American Muslims' free and full exercise of their religion through charitable giving, or Zakat. Zakat is one of the core "five pillars" of Islam and a religious obligation for all observant Muslims. In interviews with American Muslim donors, the ACLU documented a pervasive fear that they may be arrested,

The government's actions have created a climate of fear that chills American Muslims' free and full exercise of their religion through charitable giving, or Zakat, one of the "five pillars" of Islam and a religious obligation for all observant Muslims.

ing groups for designation as terrorist organizations, and the federal government's enforcement of terrorism financing laws has disproportionately affected Muslim charities. Of nine U.S.-based charities whose assets have been seized by the Department of Treasury, seven are Muslim charities, and two are Tamil charities that provided humanitarian aid in Sri Lanka. In the majority of these cases, the government has not brought charges; only three designated U.S.-based Muslim charities have faced criminal prosecution, and only one has been convicted.

Today, the Treasury Department has virtually unchecked power to designate groups as terrorist organizations. Terrorism financing laws are overly broad and lack procedural safeguards that would protect American charities against government mistake and abuse. They do not require the Treasury Department to disclose the evidence on which it bases decisions to designate charities, not even to the accused charities themselves. The laws also

prosecuted, targeted for law enforcement interviews, subpoenaed, deported, or denied citizenship or a green card because of charitable donations made in fulfillment of their sacred duty to give Zakat (charity or alms). Many American Muslims reported that the climate of fear has made it impossible for them to fulfill their religious obligation to give Zakat in accordance with their faith and to associate with fellow Muslims. The United States has long been regarded as a beacon of religious freedom, and yet U.S. terrorism financing laws and policies developed under the Bush administration are inhibiting American Muslims' ability to freely and fully practice their religion.

This report documents the effect of U.S. government actions on American Muslims' exercise of their right to profess and practice their religion through charitable giving. This report is based on 120 total interviews, including 115 interviews the ACLU conducted with Muslim community leaders and American Muslims directly affected by the U.S. government's policies regarding Muslim charities and Muslim charitable donors. The ACLU's research shows that U.S. terrorism financing policies and practices are undermining American Muslims' protected constitutional liberties and violating their fundamental human rights to freedom of religion, freedom of association, and freedom from discrimination. These policies and practices are neither fair nor effective, and are undermining American values of due process and fairness.

b. Executive Summary

Terrorism Financing Laws Impose Guilt by Association and Punish Legitimate Humanitarian Aid

Terrorism financing laws cover (i) schemes under which the government may designate organizations as terrorist through an administrative action in which the government shuts organizations down, often without allegations of criminal wrongdoing (criminal charges are not always brought in such cases), and (ii) criminal prosecutions for material support for terrorism or to a terrorist organization. These regimes raise different issues, detailed below, but have in common a lack of fundamental due process safeguards and impose guilt by association. As a result, American Muslim organizations and individuals are unfairly targeted in violation both of their First and Fifth Amendment rights and international law.

The counterterrorism legal framework is inherently vulnerable to mistake and abuse, and charities run the risk of irreversible harm on the basis of unsubstantiated evidence and without even basic due process protections.

The laws prohibiting material support for terrorism are in desperate need of re-evaluation and reform to make them fair and effective. Intended as a mechanism to starve terrorist organizations of resources, these statutes instead effectively impose guilt by association and do not provide guidance about what is and is not prohibited. Although the need to ensure that humanitarian aid and charitable donations are not diverted to support terrorism is a real and valid counterterrorism

issue, both the material support statutes and the government's interpretation of the statutes raise constitutional and human rights concerns.

The laws prohibiting material support for terrorism contain deeply troubling constitutional flaws. Because the material support statutes impose punishment without regard for the intent or character of the support provided, these statutes punish wholly innocent assistance to arbitrarily blacklisted individuals and organizations, undermine legitimate humanitarian efforts, and can be used to prosecute innocent donors who intend to support only lawful activity through religious practice, humanitarian aid, speech, or association. The government has argued that those who provide support to designated organizations can run afoul of the law even if they oppose the unlawful activities of the designated group, intend their support to be used only for humanitarian purposes, and take precautions to ensure that their support is indeed used for these purposes.⁵ This broad interpretation of the material support prohibition effectively prevents humanitarian organizations from providing needed relief in many parts of the world where some designated groups control schools, orphanages, medical clinics, hospitals, and refugee camps.⁶

Because the material support statute contains no general exception for humanitarian assistance, many benign activities that are crucial for humanitarian aid and disaster relief are labeled material support, including provision of food aid, latrines, blankets, clothing, or tents.⁷ Other activities that arguably fall within the definition of material support include teaching English to nurses, public health experts' advice on creating clean water supplies in a refugee camp, conflict resolution programs, and doctors' training on how to test, treat, and contain contagious diseases. Under the material support statute, an organization can provide medication, but not clean drinking water with which to take the medication. The material support

provisions are so broad that, in theory, even the International Committee of the Red Cross could be prosecuted for the aid it provides.

The Terrorism Financing Legal Framework Denies Due Process to Charities

The counterterrorism legal framework denies charities due process, exposing them to mistake and abuse. The laws prohibiting material support for terrorism provide federal officials with wide discretion in choosing groups or individuals for designation, empower the Department of Treasury to seize the assets of charitable organizations with no notice and on the basis of secret evidence, and contain inadequate procedures for challenging designations. The laws allow the seizure and indefinite freezing of a charitable organization's assets "pending investigation" without charges, opportunity to respond, or meaningful judicial review. A 9/11 Commission staff report on terrorism financing found that the laws that allow the Treasury Department to designate and seize the assets of charities raise "substantial civil liberty concerns."⁸

The counterterrorism laws are inherently vulnerable to mistake and abuse, and charities run the risk of irreversible harm on the basis of unsubstantiated evidence and without even basic due process protections. There is a lack of accountability for Treasury's designation and asset blocking actions, and the limited independent review that has taken place reveals cause for concern and highlights the need for more robust oversight and due process protections for charities. Criminal prosecutions of Muslim charity leaders and associates, and government oversight review of some cases, have exposed flaws in evidence used to designate and shut down charities and have demonstrated a lack of persuasive evidence of terror financing by U.S.-based charities. Criminal prosecutions and independent review have revealed that the evidence used to designate Muslim charities has included

rank hearsay inadmissible in court, news articles that do not even mention the charity in question, or intelligence that has been inaccurately and prejudicially translated.

For instance, the 9/11 Commission staff pointed out troubling flaws in the evidence that served as the basis for designation of two U.S.-based Muslim charities, finding that the evidentiary foundation for designations “were quite weak” and “revealed little compelling evidence that either of these charities actually provided financial support to al Qaeda...despite unprecedented access to the U.S. and foreign records of these organizations.”⁹ The 9/11 Commission staff also noted:

In many cases, we can plainly see that certain nongovernmental organizations (NGOs) or individuals who raise money for Islamic causes...are “linked” to terrorists through common acquaintances, group affiliations, historic relationships, phone communications, or other such contacts. Although sufficient to whet the appetite for action, these suspicious links do not demonstrate that the NGO or individual actually funds terrorists and thus provide frail support for disruptive action, either in the United States or abroad.¹⁰

In addition, independent review conducted in the United Kingdom, Canada, Sweden, and Luxembourg has cleared some designated organizations, and government representatives and courts in these countries have chastised the U.S. government for its inability to show any proof of terrorism funding in the cases under review.

Discriminatory Enforcement of Counterterrorism Laws against Muslim Charities

The federal government’s enforcement of terrorism financing laws has disproportionately affected Muslim charities. The ACLU has documented nine U.S.-based, American Muslim charities that have closed as a result of government action or investigation. These charities were located in Texas, Michigan, Missouri, Illinois, Oregon, Ohio, Massachusetts, and New York. Of nine U.S.-based charities whose assets have been seized by the Department of Treasury, seven are Muslim charities (the two non-Muslim charities are Tamil Rehabilitation Organization-USA and Tamil Foundation, U.S.-based Tamil charities that provided humanitarian aid in Sri Lanka). To date, only three designated U.S.-based Muslim charities have faced criminal prosecution, only one of which has been convicted. Many American Muslim community leaders and members have pointed to the disproportionate enforcement of counterterrorism laws against Muslim charities as evidence of discriminatory, religion-based targeting of Muslims and their charitable organizations. Such practices have alienated American Muslims and undermined U.S. standing in the Muslim world, and have fueled often inflammatory allegations by radical groups that the United States is against Islam and Muslims.

Six Muslim charities have been shut down as a result of the Treasury Department’s designation of them: Al Haramain Islamic Foundation-USA (Oregon), Benevolence International Foundation (Illinois), Global Relief Foundation (Illinois), Holy Land Foundation for Relief and Development (Texas), Islamic American Relief Agency-USA (Missouri), and Goodwill Charitable Organization (Michigan). A seventh U.S.-based Muslim charity has closed due to an Office of Foreign Assets Control (OFAC) blocking order but still has not been designated over three years later: KindHearts for Charitable Humanitarian Development (Ohio).

In addition, at least six U.S.-based, American Muslim charities, including KinderUSA (Texas), Life for Relief and Development (Michigan), Al-Mabarrat (Michigan), Child Foundation (Oregon), Help the Needy (New York), and Care International (Massachusetts) have been declared under investigation or raided. These charities have not been designated nor had their assets seized pursuant to a blocking order, but have suffered as a result of government conduct, including publicly announced investigations, law enforcement raids, and intrusive surveillance. Two of these charities, Help the Needy and Care International, have closed. The ACLU has documented that raids of Muslim charities—conducted without the government’s even going through the designation or asset-blocking process—have substantially disrupted their operation, scaring off donors in the absence of indictable evidence of wrongdoing.

In some cases, the U.S. government has smeared the reputations of Muslim charities, Muslim community organizations, and associates of Muslim charities without affording these organizations and individuals their day in court or any other opportunity to clear their names. For instance, in one material support prosecution against a Muslim charity, government lawyers named individuals and organizations, including some of the country’s largest, mainstream Muslim organizations, as unindicted co-conspirators in the criminal case. Government lawyers made these inflammatory charges against individuals and organizations that have not been charged with any crime, without affording the named individuals and groups the ability to defend themselves or clear their names, in clear violation of these individuals’ and organizations’ constitutional right to presumption of innocence.



Pupils of the Al-Ihsan Academy, a Muslim school in Michigan, count food donated for Zakat. The government’s actions have chilled American Muslims’ free and full exercise of their religion through charitable giving, or Zakat, one of the core “five pillars” of Islam and a religious obligation for all observant Muslims. (Clarence Tabb Jr./Detroit News)

Intimidation of Muslim Donors by Law Enforcement

Federal law enforcement is engaging in practices that intimidate Muslim donors and create a climate of fear that chills American Muslims' free and full exercise of their religion through charitable giving. Many donors reported to the ACLU that the Federal Bureau of Investigation (FBI) has approached major donors to Muslim charities at their workplaces and homes for interviews about their charitable donations and knowledge of Muslim charities' activities locally and nationally. For example, in one coordinated action, the FBI interviewed about 60 Muslim donors in Flint, Michigan, about their donations to Muslim charities. Muslim donors also complained that upon return home from travel overseas, Customs and Border Protection agents subject them to detailed questioning about their donations to legal, U.S.-based Muslim charities. Furthermore, donors have been subpoenaed to testify in more than one charity-related grand jury investigation, further contributing to the community's fear.

In addition, numerous Muslim community leaders and Muslim donors told the ACLU that federal and local law enforcement and Treasury Department officials' refusal to reassure donors that they will not retroactively be held liable for donations compounds the climate of fear. Moreover, many interviewees reported that they believe that federal and local law enforcement has also approached community members about serving as informants in their mosques to monitor donations there. Several interviewees confirmed they had been approached in this manner, and while it is impossible for the ACLU to assess the extent of this practice, community members' perception that this is happening on a large scale contributes to the climate of fear that chills Muslims' charitable giving.

Chilling Effect on Muslim Charitable Giving and Impact on Religious Freedom

The government's designation, seizing of assets, and law enforcement raids of Muslim charities; interview of donors to Muslim charities; and criminal prosecution of Muslim charity leaders have created a chilling effect on American Muslims' charitable giving. The obligation to give Zakat (charity or alms) is one of the core "five pillars" of Islam, the five duties considered essential for all Muslims. The obligation to give Zakat is seen as a sacred duty for all observant Muslims. Many Muslims believe that the Zakat must be given to other Muslims and through Muslim charities that are familiar with the religious rules for the handling and distribution of Zakat, although there is not unanimity in this belief.

"Closing down the charities, you are getting to the spiritual essence of the human being. Every person needs to give to charities as a religious obligation, to feel good as a person, and the government has closed this off."

In interviews with American Muslim donors, the ACLU documented a pervasive fear among Muslim charitable donors that they may be arrested, retroactively prosecuted for donations made in good faith to legal Muslim charities, targeted for law enforcement interviews for exercising their religious obligation to pay Zakat, subpoenaed to testify in a criminal case, subjected to surveillance, deported or denied citizenship or a green card, or otherwise implicated because of charitable donations made in fulfillment of their religious obligation to give Zakat.

Since 2002, media reports have suggested, based on anecdotal evidence, that the designation of Muslim charities has created fear among American Muslim donors and chilled their charitable giving. The ACLU conducted 115 interviews with Muslim community leaders and American Muslims directly affected by the U.S. government's policies regarding Muslim charities and Muslim charitable donors. The ACLU's research confirms previous anecdotal reports of this chilling effect.

In interviews with the ACLU, many Muslims reported that the climate of fear has made it impossible for them to fulfill their religious obligation to give Zakat in accordance with their faith. For these observant Muslims, the atmosphere of fear created by the government's treatment of Muslim charities and donors has directly impacted their ability to practice their religion. One Bangladeshi-American Muslim told the ACLU, "I am so concerned about giving money to a Muslim organization. It hurts me, because I myself am not able to practice Zakat...and I cannot practice my religion fully."¹¹ A U.S.-born Muslim man told the ACLU, "The implied threat and fear of reprisal regardless if the charity is a legal entity now stops our giving, prevents us from fulfilling our religious duty.... Limiting Zakat, it is like telling Christians they can't assemble on Sunday. To take away one-fifth of Islam, one of the five pillars of Islam, is to eat away at the religion."¹² According to a Pakistani-American Muslim man:

For six years I really have not been able to fulfill Zakat, I couldn't fulfill my religious obligation. [The Holy Land Foundation] was in the news and they painted all the Muslim charities with a very broad brush; for a very long time we haven't known what charity we could trust to give to.... It is an obligation we have as a Muslim: you have to pray, you have to go on Hajj, and you have to give Zakat if you can afford it. This is all part of being a Muslim, and we absolutely have not been able to practice our religion to the extent we are obligated to do so. This is why the Pilgrims sailed here, for religious freedom.

I don't have any religious rights anymore; I ask am I living in America? It is disheartening, disappointing. I feel that I sinned. My intention has been to give, but the circumstances are such that I cannot give.¹³

For some Muslims the ACLU interviewed, their failure to fulfill their obligation to give Zakat brings serious consequences for their religious standing, and many donors spoke poignantly of this personal impact of terrorism financing policies and practices. One Lebanese-American Muslim told the ACLU, "My religious standing is affected because the atmosphere of fear affects me. It depends on the person; not everybody is strong enough. For me, personally, this was a factor that affected me. I wasn't strong enough, so one of the pillars of my religion is not being fulfilled properly, as it should be.... If you are not fulfilling your pillar of Islam, your Zakat, it hurts you."¹⁴ Another donor explained, "Closing down the charities, you are getting to the spiritual essence of the human being. Every person needs to give to charities as a religious obligation, to feel good as a person, and the government has closed this off."¹⁵

American Muslims whose charitable giving has been affected by terrorism financing policies and practices articulated to the ACLU various consequences they feared if they give Zakat. For example, one Muslim donor told the ACLU that fear of accusations based on guilt by association has had a chilling effect on his practice of Islam through charitable donations:

The government is making accusations right and left, and this has had a chilling effect on our ability to practice our religion. I haven't been able to give. We have seen different natural disasters across the world, but when we wanted to give to a Muslim charity for religious purposes we couldn't. We have been afraid; there is a fear in the community, that if we give, we will be found guilty by association, we'll be caught in this big dragnet.... I am

one individual; how am I to protect myself if I am unfairly accused? I fear being dragged into an investigation, being labeled as someone who supports terrorism. Islam says if you see a Muslim in need you have to give him charity, but if you can't it definitely prevents you from practicing your religion.¹⁶

The ACLU does not suggest that the right to give donations in the name of Zakat is absolute, and neither does it maintain that donations made in the name of Zakat should be unrestricted in all cases, regardless of the circumstances. It is the chilling effect on charitable donations made in good faith and intended to be used only for humanitarian purposes that raises constitutional and human rights concerns.

Chilling Effect on Association with Muslim Community and Religious Organizations

The government's policies and practices toward Muslim charities and donors also have created a chilling effect on American Muslims' association with Muslim community and religious organizations. Mosques not only serve as prayer spaces, but as hubs for various facets of religious and cultural life. Mosques also serve as religious schools, charity distribution centers, Arabic language schools, and youth centers. ACLU research reveals that the atmosphere of fear created by the closure of Muslim charities, law enforcement interviews of Muslim donors and other Muslims, and criminal prosecution of some Muslim charity leaders for material support, is unfairly limiting American Muslims' freedom to associate with Muslim religious and community organizations, including mosques, Islamic schools, Arab and Muslim advocacy organizations, and Muslim charities.

Many American Muslims reported to the ACLU that the climate of fear created by the government's policies regarding Muslim charities and charitable

giving is affecting their participation in a wide range of religious activities. Muslim community leaders and members in Michigan and Texas described to the ACLU the chilling effect on Muslims' participation in religious activities such as congregational prayer at the mosque on Friday, Eid celebrations at the conclusion of Ramadan, or other communal religious rituals. This chilling effect implicates both freedom of religion and association, in contravention of constitutional and human rights protections.

The United States has long been regarded as a beacon of religious freedom. And yet U.S. terrorism financing laws and policies developed under the Bush administration are inhibiting American Muslims' ability to freely and fully practice their religion.

For example, an American Muslim man told the ACLU, "What they are affecting is the institutions through which I participate in my religion. How do I explain to my son that unlike a church that has a picnic in the park, we are unable to participate in such events?"¹⁷ An American Muslim woman said that she and her family now are too fearful to worship at their mosque. She explained, "We don't have as much outward participation in our religion as we used to.... Because of the government's intimidation, if we pray in congregation we fear more questioning: what is your connection to that person you were seen praying with? More people like us are choosing to pray at home instead of getting out and praying in the congregation."¹⁸

Collateral Consequences Undermine Counterterrorism Efforts

The ACLU's research documented several collateral consequences of U.S. terrorism financing policies and practices towards U.S.-based Muslim charities and Muslim donors that actually undermine counterterrorism efforts. The ACLU's research showed that these policies and practices are alienating Muslim Americans; are damaging America's reputation and diplomatic efforts in Muslim countries by giving the appearance of a war on Islam; are fomenting fear that drives Muslim Americans' charitable donations underground; and are creating a chilling effect on overseas humanitarian relief efforts. Each of these collateral consequences is counterproductive to the U.S. government's efforts to counter terrorism.

The ACLU found that instead of working with American Muslim donors as valuable allies in the "war on terrorism financing," the U.S. government's terrorism financing policies and practices have alienated Muslim Americans and engendered mistrust of law enforcement.¹⁹ Many American Muslims told us that the government's closure of Muslim charities and intimidation of Muslim donors has undermined their trust in federal and local government, including law enforcement authorities. One Muslim community leader in Texas told the ACLU, "A fissure has opened up between the government and our community, and this wound is not healing."²⁰ The 9/11 Commission staff found that terrorism financing policies "can undermine support in the very communities where the government needs it most," and "risks a substantial backlash."²¹

Terrorism financing policies are also undermining U.S. reputation abroad, especially in Muslim countries that are crucial allies in the "war on terrorism financing." In fact, Treasury Department-led terrorism financing efforts could undermine diplomatic efforts, just as President Barack Obama reaches out to Muslim countries. U.S. policies

give the impression that the fight against terrorism financing is a war on Islam, directly contradicting President Obama's recent announcement before the Turkish Parliament that "America's relationship with the Muslim community, the Muslim world, cannot, and will not, just be based upon opposition to terrorism."²²

The ACLU documented a significant rise in cash donations as a proportion of Muslim donors' donations. Fear of the consequences of donating to legal Muslim charities has led many Muslims to make donations exclusively in cash to mosques or their family members, in order to preserve their anonymity and protect themselves from reprisal. According to experts, this proportionate rise in cash donations may complicate U.S. government efforts to track flows of funds.

Finally, ambiguities of the policies on material support and the climate of fear these policies have created have impacted vital humanitarian work overseas and cost lives, counter to U.S. interests abroad. Overbroad and vague material support laws create risks for humanitarian aid groups seeking to provide aid to needy civilians in areas affected by civil war and natural disasters, where designated terrorist organizations control territory. Because there is no humanitarian exemption from material support laws (only the provision of medicine and religious materials are exempted), aid workers in conflict zones are at risk of prosecution by the U.S. government. Tragically, U.S. counterterrorism laws make it more difficult for U.S. charities to operate in parts of the world where their good works could be most effective in countering extremism and enhancing security.

Conclusion

The United States is shirking its commitments under international treaties that enshrine the rights to freedom of religion, freedom of association, and freedom from discrimination. As a state party to the International Covenant on Civil and Political Rights and the Convention on the Elimination of All Forms of Racial Discrimination, the United States must respect freedom of religious belief, practice, observance and worship, and must guarantee freedom of religion without distinction as to race, color, or national or ethnic origin. The United States also is undermining American Muslims' First Amendment rights to freedom of religion and freedom of association, and their right to equal protection under the law. As one U.S.-born Muslim told the ACLU,

The freedom of religion, that's why the Puritans came here to settle in the U.S. I believe in the Constitution that was set forth by our forefathers, who were so enlightened and had such broad minds to set forth the most basic rights in our Constitution. But for our government to go directly against that, against our right to practice our religion—because a fundamental tenet of our religion is being infringed upon—that's not the right thing to do.... Religious persecution was the first and foremost reason why people came to America. To restrict religious freedom is to erode a fundamental pillar of this country.²³

The United States has long been regarded as a beacon of religious freedom, and since the 1940s, the United States has played a prominent role in promoting the rhetoric of freedom of religion in the international arena. During World War II, Franklin Roosevelt identified “freedom to worship” as one of the “four freedoms” for which the allies were fighting.²⁴ And yet U.S. terrorism financing laws and policies developed under the Bush administration are inhibiting American Muslims' ability to freely and fully practice their religion.

c. Recommendations

There are clear measures the U.S. government should take to ensure American Muslims can freely and fully exercise their religion while protecting charities from mistaken targeting and abuse, and promoting national security and humanitarian aid. The ACLU calls on the U.S. government, including the President, Department of Treasury, Department of Justice, Federal Bureau of Investigation, Department of State, and Congress to implement a series of discrete legal and policy changes, outlined below.

i. To the President

- Repeal Executive Order 13224, which creates mechanisms for designating individuals and groups as “specially designated global terrorists,” with respect to U.S. persons and entities, as well as foreign entities entitled to constitutional protections due to their substantial connections with the United States.²⁵
- Issue an executive order requiring watch lists to be completely reviewed within three months, with names limited to only those for whom there is credible evidence of terrorist ties or activities.
- Set time limits on frozen funds. Create a process for release of frozen charitable funds to beneficiaries. Ensure charitable funds frozen by the Treasury Department are ultimately released and used for charitable purposes in accordance with the original donors' intent.
- Adequately equip the Privacy and Civil Liberties Oversight Board, established pursuant to the Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. No. 108-408 (2004), and task the Board with conducting oversight of OFAC. The Privacy and Civil Liberties Board exercised oversight over the Department of

Treasury's Terrorist Financing Tracking Program as part of its mandate to monitor the impact of U.S. government actions on civil liberties and privacy interests.²⁶

- Issue an executive order prohibiting racial profiling by federal officers and banning law enforcement practices that disproportionately target people for investigation and enforcement based on race, ethnicity, national origin, sex or religion.
- Order the FBI, Department of Justice Joint Terrorism Task Force, and other federal agencies to cease public raids of charities under investigation, to cease intimidating interview of Muslim donors without suspicion, and to cease surveillance of charities and mosques without evidence of wrongdoing.
- Direct the Attorney General to thoroughly review the amended Guidelines on General Crimes, Racketeering Enterprise and to amend them to protect the rights and privacy of innocent persons (as detailed in the below recommendations to the Department of Justice).
- Direct the Attorney General to revise the Department of Justice ban on racial profiling in federal law enforcement to close the existing exemption for national security and border integrity activities.
- Work with Congress to establish a statutory investigative charter for the FBI that limits the FBI's authority to conduct investigations without specific and articulable facts giving reason to believe that an individual or group is or may be engaged in criminal activities, is or may be acting as an agent of a foreign power.

ii. *To the Department of Treasury*

- Swiftly create and implement a process for releasing frozen funds to beneficiaries via another charity for distribution in accordance with the original donors' intent and based on the nonprofit sector's proposed procedures.²⁷ Such a program may be based on powers existing in current regulations.²⁸
- For charities closed in the future, permit these charities to direct their seized funds to charities mutually approved by the frozen charity and the government.
- Ensure the right to counsel for designated charities, by allowing designated charities to use their own funds to pay for their defense.
- Withdraw the Office of Foreign Assets Control (OFAC) Anti-Terrorist Financing Guidelines / Voluntary Best Practices for U.S.-based Charities.
- Conduct public education and outreach with charities, so that charities can know how to carry out their missions while adhering to anti-terrorism laws, and avoid being blindsided by government enforcement.

iii. *To the Department of Justice*

- Do not retroactively target Muslim donors for enforcement or harassment on the basis of good faith donations made to lawful charitable organizations. Conduct effective outreach to reassure Muslim donors they will not retroactively be targeted for enforcement, even if charities are designated in the future.
- Cease naming unindicted co-conspirators (UCCs) in material support prosecutions.
- Publicly clear the UCCs in the HLF case. Expunge the names of organizations and individuals on the UCC list from any public record that identifies these groups as unindicted co-conspirators.
- Permit defendants charged with material support to challenge the underlying designation in their criminal cases.
- The U.S. Attorney General should thoroughly review the amended Guidelines on General Crimes, Racketeering Enterprise and amend them to:
 - Specifically prohibit the use of race, religion, national origin, or the exercise of First Amendment-protected activity as factors in making decisions to investigate persons or organizations.
 - Prohibit the FBI from initiating any investigative activity regarding a U.S. person absent information or an allegation that such person is engaged or may engage in criminal activity, or is or may be acting as an agent of a foreign power.
 - Prohibit the use of intrusive investigative techniques absent specific and articulable facts that give a reasonable indication that the subject of the investigation is engaging in a violation of federal law.
- Require the FBI to employ the least intrusive means necessary to accomplish its investigative objectives. In each investigation, the FBI should consider the nature of the alleged activity and the strength of the evidence in determining what investigative techniques should be utilized. Intrusive techniques such as law enforcement undercover activities and recruiting and tasking sources should only be authorized in full investigations, and only when less intrusive techniques would not accomplish the investigative objectives.
- Prohibit the FBI from collecting or maintaining information about the political, religious or social views, associations or activities of any individual, group, association, organization, corporation, business or partnership unless such information directly relates to an authorized criminal or national security investigation, and there are reasonable grounds to suspect the subject of the information is or may be involved in the conduct under investigation.
- Revise the Department of Justice ban on racial profiling in federal law enforcement to close the existing exemption for national security and border integrity activities.
- The U.S. Attorney General should create a mechanism for issuing subpoenas at the request of the Privacy and Civil Liberties Oversight Board. For example, this can be done through the creation of a *Memorandum of Understanding* between the Board and the attorney general in which the attorney general promises to enforce subpoenas issued by the Board's request unless he or she certifies that such a subpoena would be unlawful.

iv. *To the Federal Bureau of Investigation*

- Cease the use of race, religion, national origin, or the exercise of First Amendment-protected activity as factors in making decisions to investigate persons or organizations.
- Cease the use of intrusive investigative techniques absent specific and articulable facts that give a reasonable indication that the subject of the investigation is engaging in a violation of federal law.
- Cease initiating any investigative activity regarding a U.S. person absent information or an allegation that such person is engaged or may engage in criminal activity, or is or may be acting as an agent of a foreign power. A preliminary investigation opened upon such information or allegation should be strictly limited in scope and duration, and should be directed toward quickly determining whether a full investigation, based on facts establishing reasonable suspicion, may be warranted.
- In each investigation, employ the least intrusive means necessary to accomplish its investigative objectives. Consider the nature of the alleged activity and the strength of the evidence in determining what investigative techniques should be utilized. Intrusive techniques such as recruiting and tasking sources, law enforcement undercover activities, and investigative activities requiring court approval should only be authorized in full investigations, and only when less intrusive techniques would not accomplish the investigative objectives.
- Cease collecting or maintaining information about the political, religious or social views, associations or activities of any individual, group, association, organization, corporation, business or partnership unless such information directly relates to an authorized criminal or national security investigation, and there

are reasonable grounds to suspect the subject of the information is or may be involved in the conduct under investigation.

v. *To the Department of State*

- Implement the State Department *Guiding Principles on Non-Governmental Organizations* in the United States, including due process and protection of rights of speech and assembly.²⁹
- Review what is required to implement the *Guiding Principles* in the United States. Consult with the U.S. nonprofit sector to make recommendations on needed reforms that advance humanitarian work while protecting national security.
- The Secretary of State should exercise her power to grant exemptions through 2339B(j) waivers for specific technical advice and assistance, training and personnel where no violent activity is involved, to exempt these forms of assistance from the material support statute. Establish clear, ongoing policy under current law, using the humanitarian waiver or the general amendments to the statute. The statutory waiver authority could be used to signal that the U.S. will not prosecute people who are acting consistent with the rules of the International Committee of the Red Cross (ICRC).
- Create fair procedures for individuals to be removed from watch lists. These procedures should include deadlines for agency decisions and appeal rights. Support due process reforms for United Nations watch lists consistent with human rights and humanitarian law obligations.

vi. To Congress

- Reform the statutory scheme for designation of U.S. persons and entities, and of foreign entities entitled to constitutional protections due to their substantial connections with the United States,³⁰ as “specially designated global terrorists” (SDGT) under the International Emergency Economic Powers Act (IEEPA) to establish full due process protections, including:
 - Issuing transparent standards governing OFAC designations.
 - Creating a higher legal standard for designations.
 - Precisely defining the criteria for an individual or entity to be found an SDGT.
 - Enacting a (not over-broad) statutory definition of “specially designated terrorist” (SDT).
 - Providing timely notice including a full list of charges and statement of reasons.
 - Restricting the use of secret evidence.
 - Providing a meaningful opportunity to defend, including the ability to submit evidence and a hearing.
 - Requiring OFAC to provide a detailed statement of reasons for a decision to designate.
 - Providing judicial review of agency action.
 - Creating a statutory basis for challenging designations and asset freezing process.
 - Creating an effective redress program for individuals or organizations mistakenly flagged as a designated person.
- Generate intermediate sanctions for charities as part of a reformed regulatory framework for charities that includes fundamental due process protections. Such an intermediate process should include:
 - Issuing cease and desist orders to charities before taking disruptive action, to provide charities the opportunity to cure any issues and avoid sanctions by complying with the order. Such orders should provide detailed information about what actions or relationships are objectionable, and should include an opportunity for charities to contest the factual information or assumptions that led to the order.
 - Providing charities with an opportunity to cure before taking disruptive action. Such a process should allow charities a meaningful period of time to cure issues that would lead to designation or seizure of assets.
 - Creating an appeal process to challenge proposed actions, including:
 - Providing notice, including a full list of charges and statement of reasons.
 - Guaranteeing a right to a hearing, including fair trial or administrative hearing with cross examination and ability to submit evidence, to decide on designation.
 - Providing opportunity to present evidence in rebuttal.
 - Restricting the use of secret evidence.
- Amend the criminal material support statutes to require proof of specific intent to further an organization’s unlawful activities before imposing criminal liability. Amend 18 U.S.C. § 2339A and 18 U.S.C. § 2339B provisions, which punish

support to a designated terrorist group regardless of whether the person providing that support intended, or in fact did, further the group's violent activities, to instead require that the government prove that individuals charged specifically intended to further terrorist activity when they provided humanitarian assistance.

- Remove overbroad and impermissibly vague language, such as “training,” “service,” and “expert advice and assistance” from the definition of material support. Alternatively, amend 18 U.S.C. §§ 2339A(b)(1)-(b)(3) and 18 U.S.C. § 2339B(a)(1) to clarify this impermissibly vague language and insert a specific intent requirement into the definition of the provision of training, service, and expert advice or assistance.
- Expand the humanitarian exemptions to the material support statute beyond medicine and religious materials. Broader material support exceptions should include: medical equipment and services, civilian public health services, legal services, food, water, clothing, and shelter to noncombatants. Human rights training and conflict resolution services should be entirely exempted.
- Amend 50 U.S.C. § 1702(a)(1)(B) (as amended by Section 106 of the USA PATRIOT Act), striking language that authorizes OFAC blocking orders to freeze an organization's assets “pending investigation.”³¹ Alternatively, build in due process protections for charities under investigation (i.e. whose assets are frozen and seized pending designation).
- Require periodic OFAC reports to Congress, to promote transparency and accountability.
- Conduct Congressional oversight hearings on terrorism financing policies as applied to the charitable and nonprofit sector. Include

testimony from representatives of the charitable and Muslim communities in order to more accurately and completely evaluate the impact of the Department of Treasury's counterterrorism procedures.

- Request that the Government Accountability Office (GAO) conduct an investigation of frozen charitable funds to determine how much is currently blocked, what the original intent of donors was (by identifying and locating managers of the organizations involved), what barriers exist to transferring the funds for charitable purposes, and what that law provides for the eventual disposition of the funds.
- Pass the End Racial Profiling Act.
- Establish a legislative charter for the FBI, limiting the FBI's investigative authorities by requiring a factual predicate sufficient to establish reasonable suspicion before intrusive investigative techniques may be authorized, and prohibiting investigations based upon the exercise of First Amendment rights.
- Enact legislation to de-fund any FBI activities that chill the free exercise of First Amendment rights.

vii. *Regarding Proposals to Create a White List of Approved Charities*

While some individuals and groups have called for a government-created white list of approved charities, the ACLU is opposed to such a list. A white list would be deeply problematic, as it would be open to potential discrimination and abuse by government agencies, could be biased against some organizations and in favor of others based on religion or other factors, and would exclude smaller groups without the resources to get on the list. The executive director of KinderUSA told the ACLU, “I am totally opposed to the white list [proposal]. A white list, to me, is the same as a blacklist. If you start creating a white list you’ll have to comply with the ‘gang’ or be removed from the list.”³² According to Laila al-Marayati, president of the board of directors of KinderUSA, “If you don’t get on the white list then people would say we can’t give to you, so the government would be able to give legitimacy to those groups [on the list]. If you’re not on the list then would that mean that you were engaged in criminal activities?”³³

II. Methodology

The ACLU conducted 120 in-person and telephone interviews for this report. This report is based on 115 in-person and telephone interviews with Muslim community leaders and American Muslims directly affected by the U.S. government's policies regarding Muslim charities and Muslim charitable donors. The ACLU conducted interviews with 81 American Muslims in Texas in May, July, and August 2008; interviews with 33 American Muslims in Michigan in November 2008 and March 2009; and six telephone interviews with individuals in other locations. The ACLU also interviewed two former Department of Treasury officials.

To research American Muslims' charitable giving, the ACLU conducted interviews with observant Muslims who are of the age and income level to pay Zakat. The ACLU conducted these interviews with American Muslims who represent a cross-section of the Muslim community in the Dallas/Fort Worth and Metro Detroit area, including African-American Muslims, converts to Islam, and Muslim Americans of Afghan, Bangladeshi, Chinese, Egyptian, Eritrean, Indian, Indonesian, Iranian, Iraqi, Kuwaiti, Lebanese, Moroccan, Palestinian, Pakistani, Somali, Syrian, and Turkish origin. Effort was made to interview women and men, young and old, U.S.-born and immigrant, Sunni and Shi'ia, and Muslims of varying income levels.

The ACLU also interviewed the executive directors of four operating Muslim charities, attorneys representing Muslim charities, Imams and other Islamic scholars, mosque board members and other Muslim community leaders, and individuals named unindicted co-conspirators in the Holy Hand Foundation criminal case.

Many individuals interviewed are identified in this report with pseudonyms, in the form of names and initials which do not reflect real names, upon their request to ensure there is no retaliation against them. Where interviewees requested that a pseudonym be used, we have indicated so in the relevant citations.

III.

Legal Framework

Terrorism financing laws cover (i) criminal prosecutions for material support for terrorism or to a terrorist organization, and (ii) schemes under which the government may designate organizations as terrorist through an administrative action in which the government shuts organizations down, often without allegations of criminal wrongdoing (criminal charges are not always brought in such cases). These regimes raise different issues, detailed below, but have in common a lack of fundamental due process safeguards and impose guilt by association.

Terrorism financing laws are contained in the federal criminal code, immigration code, and other statutes.³⁴ These laws authorize U.S. officials to designate groups or individuals as terrorist and punish material support to them. The legal framework for these laws includes the Antiterrorism and Effective Death Penalty Act (AEDPA), known as the criminal material support statute, and the International Emergency Economic Powers Act (IEEPA), which provides for designation and freezing of the assets of “specially designated terrorist” or “specially designated global terrorist” organizations or individuals. After the September 11, 2001 attacks, the USA PATRIOT Act expanded some of the material support for terrorism provisions. This section of this report outlines these statutes and their provisions, but it does not address in detail the provisions regarding material support contained in immigration law. While immigration law provisions that penalize material support are outside the scope of this report, it should be noted that under these expansive provisions, non-citizens can be denied entry to the United States or deported for having provided material support not only to organizations designated as terrorist, but also to organizations that have never been designated.³⁵

The laws prohibiting material support for terrorism are in desperate need of re-evaluation and reform. Intended as a mechanism to starve terrorist organizations of resources, these overbroad statutes instead effectively criminalize guilt by association and do not provide guidance about what is and is not prohibited. Because the material support statutes punish material support without regard for the intent or character of the support provided, these statutes punish wholly innocent assistance to arbitrarily blacklisted individuals and organizations, undermine legitimate humanitarian efforts, and can be used to prosecute innocent donors who intend to support only lawful activity through religious practice, humanitarian aid, speech, or association.

The laws prohibiting material support for terrorism punish wholly innocent assistance to arbitrarily blacklisted individuals and organizations, undermine legitimate humanitarian efforts, and can be used to prosecute innocent donors who intend to support only lawful activity through religious practice.

The terrorism financing laws also provide federal officials with wide discretion in choosing groups or individuals for designation, empower the Department of Treasury to seize the assets of charitable organizations with no notice and on the basis of secret evidence, and contain inadequate procedures for challenging designations. The laws allow the seizure and indefinite freezing of a charitable organization’s assets “pending investigation” without charges, opportunity to respond, or meaningful judicial review.

Although the need to ensure that humanitarian aid and charitable donations are not diverted to support terrorism is a real and valid counterterrorism issue, both the material support statutes and the government's interpretation of them raise constitutional and human rights concerns. As detailed in section XI of this report, the material support for terrorism laws raise serious due process concerns and violate human rights obligations and constitutional provisions that protect freedom of religion and association.

a. Antiterrorism and Effective Death Penalty Act (AEDPA)

The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA, 18 U.S.C. § 2339), passed after the Oklahoma City bombing, criminalizes the provision of material support to terrorism or terrorist organizations.³⁶ Title 18 U.S.C. § 2339A makes it a federal crime to knowingly provide material support or resources in preparation for or in carrying out specified crimes of terrorism,³⁷ and 18 U.S.C. § 2339B outlaws the knowing provision of material support or resources to any group of individuals the Secretary of State has designated a "foreign terrorist organization" (FTO).³⁸

AEDPA also amended the Immigration and Nationality Act (INA) to give the Secretary of State almost unfettered discretion to designate FTOs.³⁹ The Secretary of State may designate an organization as an FTO if she finds that the organization is foreign, that it engages in or retains the capacity and intent to engage in terrorist activities, and that its activities threaten the national defense, foreign relations or economic interests of the United States.⁴⁰ U.S. citizens can be criminally prosecuted for giving to an FTO without any intent to further the illegal aims of the FTO. Further, the material support statute prohibits a defendant from challenging, in her own criminal trial, the blacklisting of the FTO to which she is accused of providing material support—even

though the blacklisting is what renders her otherwise constitutionally-protected activity criminal.⁴¹

The USA PATRIOT Act of 2001 and the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA) amended AEDPA. Substantial expansions of the original 1996 law were enacted in the USA PATRIOT Act, which expanded AEDPA's material support provisions originally outlined in 1996 to include those who provide "expert advice or assistance" and to increase penalties for violations of the statute.⁴² Subsection B below outlines these amendments to AEDPA in more detail.

As amended, AEDPA defines material support very broadly. The material support statute currently defines material support as: "any property, tangible or intangible, or service, including currency or monetary instruments or financial securities, financial services, lodging, training, expert advice or assistance, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel (one or more individuals who may be or include oneself), and transportation, except medicine or religious materials."⁴³ The statute not only bans material objects, but also the provision of "service," "training," "personnel," and "expert advice or assistance."⁴⁴

As amended, the material support law punishes support to a designated group regardless of whether the person providing support intended to further, or did in fact further, the group's terrorist activities.⁴⁵ In fact, even humanitarian aid intended to discourage terrorist activities can be a crime under the material support law.

b. Expansion of Prohibited Material Support

Section 805 of the 2001 USA PATRIOT Act expanded the already overbroad definition of “material support and resources” to include “expert advice or assistance,” and Section 810 increased penalties for violations of the statute.⁴⁶ After legal challenges were brought and through the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA), Congress narrowed these provisions in 2004 to require that a person have knowledge that the organization is an FTO or that the organization has engaged or engages in terrorism.⁴⁷

However, the statute still does not require the government to prove that the person *specifically intended* for his or her support to advance the terrorist activities of the designated organization,⁴⁸ and some lower courts have held that specific intent is not required for liability to attach under the statute.⁴⁹ The government has argued that those who provide support to designated organizations can run afoul of the law even if they oppose the unlawful activities of the designated group, intend their support to be used only for humanitarian purposes, and take precautions to ensure that their support is indeed used for these purposes.⁵⁰ This broad interpretation of the material support prohibition effectively prevents humanitarian organizations from providing needed relief in many parts of the world where designated groups control schools, orphanages, medical clinics, hospitals, and refugee camps.⁵¹ In 2006 Congress passed the Patriot Act reauthorization, making the material support provisions permanent.⁵²

The material support statute contains no general exception for humanitarian assistance. The only exceptions to the ban on “material support or resources” provision are for medicine and religious materials.⁵³ Therefore many benign activities that are crucial for humanitarian aid and disaster relief are labeled material support, including provision of food aid, latrines, blankets, clothing, or tents.

Other activities that arguably fall within the definition of material support include teaching English to nurses, public health experts’ advice on creating clean water supplies in a refugee camp, conflict resolution programs, and doctors’ training on how to test, treat, and contain contagious diseases. Under the material support statute, an organization can provide medication, but not clean drinking water with which to take the medication. The material support provisions are so broad that, in theory, even the International Committee of the Red Cross could be prosecuted under the material support law for the aid it provides.

The laws leave open the possibility that donors to Muslim charities may be exposed to criminal liability for their donations made with the good-faith intention to support humanitarian aid.

Examples of how far the material support statutes can go are legion. President Clinton used IEEPA to label a U.S. citizen, Muhammad Salah, a “specially designated terrorist” without hearing, notice, or trial, and without any definition of the label imposed on him. Under the law, it is a crime for anyone in the United States to provide medicine to him, give him a loaf of bread, hire him for a job, deliver a paper to him, or do business with him.⁵⁴ If the material support law were literally applied and enforced, Salah would starve to death.⁵⁵ In another case, the first person convicted of violating the criminal material support statute (AEDPA § 2339B) was sentenced to 155 years in prison for smuggling cigarettes across state lines and donating \$3,500 to Hezbollah, while his compatriots who engaged in the same smuggling but did not make the donation received sentences of about five years each.⁵⁶

Further, any suggestion that the government would not use the material support statutes to prosecute purely First Amendment-protected speech is belied by the fact that it already has. In a most notorious example, the government brought charges against University of Idaho Ph.D. candidate Sami Omar Al-Hussayen, whose volunteer work managing websites for a Muslim charity (Islamic Assembly of North America) led to a six-week criminal trial for materially supporting terrorism. The prosecution argued that by running a website that had links to other websites that carried speeches advocating violence, Al-Hussayen provided “expert assistance” to terrorists. A jury ultimately acquitted Al-Hussayen of all terrorism-related charges.⁵⁷

Such unfair and counterproductive consequences are a direct result of the overbroad and unconstitutionally vague definition of material support in the statute. The First Amendment protects an individual’s right to join or support political organizations and to associate with others in order to pursue common goals. As a result, the government cannot punish mere membership in or political association with disfavored groups—even those that engage in both lawful and unlawful activity—without the strictest safeguards. The material support provisions impermissibly criminalize a broad range of First Amendment-protected activity, both as a result of their sweeping, vague terms and because they do not require the government to show that a defendant *intends* to support the criminal activity of a designated FTO. Courts have held that vague statutes should be invalidated for three reasons: “(1) to avoid punishing people for behavior that they could not have known was illegal; (2) to avoid subjective enforcement of laws...; and (3) to avoid any chilling effect on the exercise of First Amendment freedoms.”⁵⁸ Material support prohibitions against “training,” “services” and “expert advice and assistance” fail each of these three standards.

In *Humanitarian Law Project v. Mukasey*, a group of organizations and individuals seeking to support the nonviolent and lawful activities of Kurdish

and Tamil humanitarian organizations challenged the constitutionality of the material support provisions on First and Fifth Amendment grounds.⁵⁹ They contended that the law violated the Constitution by imposing a criminal penalty for association without requiring specific intent to further an FTO’s unlawful goals, and that the terms included in the definition of “material support or resources” were impermissibly vague. On December 10, 2007, the U.S. Court of Appeals for the Ninth Circuit found the terms “training” and “service,” and part of the definition of “expert advice and assistance” unconstitutionally vague under the Fifth Amendment.⁶⁰ On January 5, 2009, the full (*en banc*) U.S. Court of Appeals for the Ninth Circuit affirmed and refused the government’s request to reconsider the December 2007 ruling by a three-judge panel.⁶¹

The material support provisions also impose guilt by association in violation of the Fifth Amendment. Due process requires the government to prove personal guilt—that an individual *specifically intended* to further the group’s unlawful ends—before criminal sanctions may be imposed.⁶² Even with the IRTPA amendments, the material support provisions do not require specific intent. Rather, the statutes impose criminal liability based on the mere knowledge that the group receiving support is an FTO or engages in terrorism. Indeed, a Florida district court judge in *United States v. Al-Arian* warned that under the government’s reading of the material support statute, “a cab driver could be guilty for giving a ride to an FTO member to the UN.”⁶³ And these constitutional deficiencies are only exacerbated by the unfettered discretion these laws give the Secretary of State to designate groups, and the lack of due process afforded to groups that wish to challenge their designation, as detailed in section IV of this report.

Because the criminal material support provisions still do not require the government to prove that the person specifically intended for his or her support to advance the terrorist activities of the designated organization, the laws leave open the possibility



KinderUSA, a Texas-based Muslim charity, provided emergency food distribution to children during and after the December 2008-January 2009 war in Gaza. The material support statute contains no general exception for humanitarian assistance. The overbroad and vague material support laws discourage and undermine the vital work of humanitarian organizations and cost lives. (KinderUSA)

that donors to Muslim charities may be exposed to criminal liability for their donations made with the good-faith intention to support humanitarian aid, as long as he or she provides the support knowing that the recipient organization has been designated as a terrorist organization or that the organization has been or is involved in "terrorist activity."⁶⁴

Reagan-era Assistant Secretary of the Treasury, Paul Craig Roberts, told the ACLU, "Even if the organization is involved in some wrongdoing the people making the contributions can't know that. Our legal system used to be based on the notion

that there can be no crime without intent, but [the amended law] causes anyone who gives out of the sympathy and the goodness of their own heart to be considered guilty."⁶⁵

Following his last official mission to review U.S. counterterrorism practices, in November 2007 the UN Special Rapporteur on Human Rights while Countering Terrorism condemned the expansion of the material support law, noting, "The USA PATRIOT Act of 2001...expand[ed] the definition of terrorist activity beyond the bounds of conduct which is truly terrorist in nature, in particular in respect of

the provision of ‘material support to terrorist organizations.’ The definition captures, for example,... the providing of funds to a charity organization which at the time was not classified as a terrorist organization.”⁶⁶

“How can you punish me for giving today to an organization that is designated five years from now?”

According to Laila al-Marayati, former presidential appointee to the U.S. Commission on International Religious Freedom and a former member of the State Department’s Advisory Committee on Religious Freedom Abroad who serves on the board of directors of a Muslim charity,

The Patriot Act leaves open the question of whether the government can go after a donor or not. And the government has the right to do that retroactively. How can you punish me for giving today to an organization that is designated five years from now? If that uncertainty—if people know that or think about that—they will say forget paying Zakat, because I cannot predict the future, because I will be or could be punished for something somebody does five years from now.⁶⁷

Imad Hamad, regional director of the American-Arab Anti-Discrimination Committee (ADC) of Michigan, noted, “It would be totally different if the entity is illegal and unlawful—then punish donations to those organizations. But if [the government can prosecute donations when] the charity is legal and lawful, then it opens the door to selective prosecution.”⁶⁸

In interviews with the ACLU, Muslim donors repeatedly criticized the material support provisions that expose them to retroactive criminal liability for

donations to charities that are later designated.⁶⁹ One Muslim donor noted of the criminal law, “It’s regressive—if you donated in 1997 and it was a legal organization, but if the government closes the organization ten years later, you’re guilty. Until when can you be held responsible?”⁷⁰ Another donor told us,

My understanding is there is something that changed in the law that the government can come back and hold the donor responsible [for his donations].... Individuals who give their donation with good intentions to a charitable organization, an organization that the government is letting operate and that the government has given a tax-exempt status, then the government has no right to come back to the individual retroactively, saying you donated years ago and now it is a questionable organization. If they are questionable, then you should have alerted us, because the community doesn’t have the resources of the government to investigate and understand accounting documents. An individual should be sheltered as long as the organization is legally operating.⁷¹

Another Muslim donor told the ACLU, “If the government gives the green light for a charity to operate,...then the normal citizen would assume they are okay to give to. Then if the government says later that the organization is not okay, the government should not go after the past donors to the organization, because they are innocent. The donors are not law enforcement who see everything and know if the charity is doing wrong. To me, if the organization is still operating, then it is innocent of me to fund it. If the organization is shut down then I know not to give.”⁷² The donor added, “Charities should be cleared until proven guilty, and if proven guilty then they should shut down the organization, but they should not threaten the people who donated to it—punish only the organization, not the donor.”⁷³

Numerous donors spoke of their worry that they would be retroactively charged with material

support for terrorism for past donations to then-legal Muslim charities. Donors in both Texas and Michigan expressed fear that they would be criminally charged with material support for terrorism on the basis of past donations to the Holy Land Foundation for Relief and Development (HLF) when it was the largest U.S.-based Muslim charity. HLF had been legally operating for over a decade before its designation and closure in December 2001, and was convicted of providing material support for terrorism on retrial in November 2008 (detailed in section V of this report). One former HLF donor said, “I am especially scared because of my [past] donation to HLF. I’m sure they’ve seized all the donation records, and they know I’ve donated to HLF.”⁷⁴ Another donor explained:

I chose HLF because I trusted it. I sponsored a three-year-old child living in a refugee camp in the Gaza Strip. I sponsored that girl until the HLF closed in 2001, from 1992 to 2001.... This is something that I am worried about. It is on my mind that if the HLF defendants are found guilty, what is to stop the government from going after the people who gave to the organization? Is the government going to look at the people who supported the organization for 10 years as suspects? I don’t see any wrongdoing in what I did, but this is a worry that I have: that we will be suspects even though the organization was legal at the time, and the dollar amount was only \$600, \$700 a year.... [Y]ou wonder what will be the charges and punishment against people who donated to an organization found to be a terrorist organization. I am afraid that this is something that will come back to haunt me, because I am somebody who donated all these years.⁷⁵

Section VIII of this report describes in more detail Muslim donors’ fears of retroactive criminal liability for their donations to legal Muslim charities and the consequential chilling effect on their charitable giving and free and full exercise of religion.

c. International Emergency Economic Powers Act (IEEPA) and Executive Order 13224

The federal government’s statutory and administrative authority to freeze assets is defined in the International Emergency Economic Powers Act (IEEPA) and Executive Order 13224 (E.O. 13224). In 1977, Congress enacted IEEPA to amend the Trading with the Enemy Act (TWEA) of 1917, in order to clarify and limit presidential powers with respect to embargoes and sanctions against foreign nations during times of national emergency.⁷⁶ These statutes authorize the President to impose economic sanctions during wartime or times of national crisis. Historically, Presidents exercised their authority under IEEPA against foreign governments such as Sudan, Burma, Libya, and Iran; and against individuals and entities only if they were citizens of sanctioned foreign nations.⁷⁷

Executive Order 13224 confers broad powers on the Secretary of Treasury and Secretary of State, contains vague criteria for designation, and lacks any evidentiary standard for designation.

To invoke the authority granted under IEEPA, the President must declare a national emergency, which requires an “unusual and extraordinary” threat to national security, foreign policy, or the U.S. economy existing wholly or substantially outside the United States. When these criteria are met, the President or a designated agency has the power to sanction organizations, individuals, or foreign nations identified as contributing to that threat. IEEPA gives the President authority to regulate, prohibit or prevent any form of economic transaction that provides services to benefit terrorists, by authorizing the President, upon declaration

of a national emergency, to “investigate, block... regulate, direct and compel, nullify, void, prevent or prohibit, any...holding,...use, transfer...or transactions involving any property in which a foreign country or national thereof has any interest by any person...subject to the jurisdiction of the United States.”⁷⁸

In 1995, President Bill Clinton extended IEEPA’s use beyond foreign countries by issuing Executive Order 12947, which designated certain terrorist organizations as “specially designated terrorists” (SDTs), thereby blocking all of their property and making it illegal to knowingly engage in transactions of any kind with designated organizations.⁷⁹ The order prohibited all transactions and dealings with designated organizations, including making and receiving contributions of funds, goods, and services.

Shortly after the terrorist attacks of September 11, 2001, President George Bush issued E.O. 13224, which provided for the designation of 27 “specially designated global terrorists” (SDGTs) and authorizes the Secretary of Treasury and the Secretary of State to designate more organizations and individuals on the Specially Designated Global Terrorist (SDGT) list.⁸⁰

E.O. 13224 confers broad powers on the Secretary of Treasury and Secretary of State, contains vague criteria for designation, and lacks any evidentiary standard for designation. The order called for the blocking of assets for (1) the 27 organizations and individuals on an annexed list, (2) any individuals or organizations that have committed or are at significant risk for committing acts of terrorism, and (3) any organizations or individuals who are found to be “owned or controlled by, or to act for or on behalf of,” an organization or individual on the SDGT list.⁸¹ The order also allows the Secretary of Treasury to block the assets of any organization or individual found to have assisted in, sponsored, or provided financial, material, or technological support for, or financial

or other services for, acts of terrorism or organizations or individuals on the SDGT list (including organizations and individuals subsequently subjected to asset blocking under the order). Lastly, the order allows the Secretary of Treasury to block the assets of any organization or individual found to be “otherwise associated with” organizations or individuals on the SDGT list (including organizations and individuals subsequently subjected to asset blocking under the order).

The order also created the Specially Designated Nationals and Blocked Persons (SDN) list, an umbrella list compiled by the Department of Treasury’s Office of Foreign Assets Control (OFAC) that includes both SDGTs and other organizations and individuals named under other sanctions programs.

The Treasury Department may impose virtually all the consequences of SDGT designation—including freezing an organization’s assets indefinitely and criminalizing all transactions with it—*without* designating the organization, but simply by opening an investigation into whether it should be designated.

IEEPA is administered by OFAC, an agency that also administers anti-money laundering laws and has traditionally had authority over embargoes against foreign nations and drug kingpins. IEEPA does not identify the standard of evidence required for OFAC to designate an organization. To designate an organization, OFAC has taken the position that it only needs to have a reasonable suspicion that the organization is providing “financial, material, or technological support for, or financial or other

services to” an SDGT or is “otherwise associated” with an SDGT.⁸²

The consequences of designation include the seizure and freezing of all financial and tangible assets, as well as significant civil and criminal penalties. As explained in section IV of this report, IEEPA effectively allows the government to shut down an organization without notice or hearing and on the basis of classified evidence, and without any judicial review. It provides that if a court does review the government’s evidence, it may do so in secret and without the presence of the charity (*ex parte* and *in camera*).⁸³

A provision of the USA Patriot Act goes even further and authorizes OFAC to freeze an organization’s assets *without* designating it or otherwise finding any wrongdoing, based on nothing more than OFAC’s assertion that the entity is under investigation. Pursuant to an amendment to IEEPA made by the USA PATRIOT Act, the Treasury Department may impose virtually all the consequences of SDGT designation—including freezing an organization’s assets indefinitely and criminalizing all transactions with it—*without* designating the organization, but simply by opening an investigation into whether it should be designated.⁸⁴ As detailed in section IV of this report, IEEPA does not specify any standard of suspicion necessary for such a freeze “pending investigation,” does not require that the entity be provided with notice or a meaningful opportunity to contest the freeze, requires no judicial approval, and contains no time limit on how long a freeze pending investigation may last.

d. OFAC’s Anti-Terrorist Financing Guidelines / Voluntary Best Practices for U.S.-Based Charities

The Department of Treasury also has created voluntary guidelines for charities. OFAC created the *Anti-Terrorist Financing Guidelines: Voluntary Best Practices for U.S.-Based Charities* in 2002. Last updated in 2006, OFAC created the guidelines to assist charities to protect themselves from unintended diversion of charitable support to terrorist organizations.⁸⁵ Both Muslim and non-Muslim charities have resoundingly criticized the Guidelines as unduly burdensome and largely ineffectual.

Charities and other organizations in the nonprofit sector have criticized the Guidelines as imposing substantial, and inefficient, administrative burdens on charitable organizations with minimal success at stopping the flow of money to terrorist activities, and have called for their withdrawal. Charities and foundations also have criticized the voluntary guidelines for their vagueness and for promoting inappropriate, ineffective, inefficient, and impracticable practices that fail to prevent the diversion of charitable funds to terrorism and chill charitable operations.⁸⁶ The Guidelines, for example, recommend that organizations complete a checklist of information searches on each of their grantees, including searches of publicly available information about the grantees’ employees.⁸⁷ Critics charge that this “list checking” and extensive search of publicly available documents will produce less information about an organization’s activities than will the networking and consultations that organizations previously used.⁸⁸ For small organizations, this list-checking procedure also may be prohibitively expensive or logistically impossible, and recommended internet searches and even searches of public records may produce false information from organizations actually involved in terrorist activity.⁸⁹

Although the Guidelines state that they “are voluntary and do not create, supersede, or modify current or future legal requirements,” some charities and foundations have said they view them as de facto legal requirements, because they fear that choosing not to follow them will invite government

Charities and other organizations in the nonprofit sector have criticized the Guidelines as imposing substantial, and inefficient, administrative burdens on charitable organizations with minimal success at stopping the flow of money to terrorist activities.

scrutiny.⁹⁰ A recent report by government watchdog organization OMB Watch and philanthropic network Grantmakers Without Borders noted, “Despite their voluntary label, nonprofits feel tremendous pressure to utilize these tools, largely because they were issued by the same agency that can seize and freeze nonprofits’ assets at any time.”⁹¹ However, organizations and their donors are not assured that, by complying with the Guidelines, the organization will avoid government investigation or a blocking order.⁹²

The ACLU spoke with the leaders of several Muslim charities who criticized the voluntary guidelines for being vague, impracticable, and imposing heavy administrative burdens. According to the executive director of KinderUSA, “The voluntary guidelines are absurd and mean absolutely nothing. You’re damned if you do and damned if you don’t: even if you follow the guidelines fully the government can still shut you down. The U.S. Treasury Department officials stated just that; the guidelines are no guarantee for charities to continue operations. So KinderUSA follows the guidelines, because we have no choice.” She added, “Administratively, it is an incredible burden. The guidelines stipulate that we must vet every beneficiary, but we feed 20,000 to 30,000 children during Ramadan alone. How can you vet a child?”⁹³

Laila al-Marayati, president of the board of directors of KinderUSA, similarly told the ACLU, “I think the voluntary guidelines are cumbersome and unnecessary. It was clear that the industry itself, philanthropy, has had provisions in place to make sure money goes to where it is intended. They focus on money not going to terrorism, but to me it is the same to ensure that the money doesn’t go to organized crime—it is the same basic approach to ensure the money goes where it is supposed to go. The guidelines create a lot of confusion and open things up for abuse.”⁹⁴

IV.

Lack of Due Process to Protect Against Mistake and Abuse

In a study on terrorism financing, the 9/11 Commission staff reported that the application of U.S. terrorism financing laws and policies to charities raises “substantial civil liberty concerns.”⁹⁵ Indeed, the counterterrorism laws deny charities due process, exposing charities to mistake and abuse. The laws prohibiting material support for terrorism provide federal officials with wide discretion in choosing groups or individuals for designation, empower the Department of Treasury to seize the assets of charitable organizations with no notice or hearing and on the basis of secret evidence, and contain inadequate procedures for challenging designations. The laws also allow the seizure and indefinite freezing of a charitable organization’s assets “pending investigation,” without notice, charges, opportunity to respond, or meaningful judicial review.

The counterterrorism legal framework is inherently vulnerable to mistake and abuse, and charities run the risk of irreversible harm on the basis of unsubstantiated evidence and without even basic due process protections. In fact, criminal prosecutions of Muslim charity leaders and associates, and government oversight review of some cases, have exposed flaws in evidence used to designate and shut down Muslim charities.

The U.S. government has also smeared the reputations of some Muslim charities, Muslim community organizations, and associates of Muslim charities without affording these organizations and individuals a day in court or any other opportunity to clear their names. In one material support prosecution against a Muslim charity, government lawyers

named individuals and organizations, including some of the country’s largest, mainstream Muslim organizations, as unindicted co-conspirators in the criminal case. Government lawyers made these inflammatory charges against individuals and organizations that have not been charged with any crime, without affording the named individuals and groups the ability to defend themselves or clear their names. Federal agents also have publicly raided or investigated Muslim charities, substantially disrupting their operations and scaring away donors without even going through the designation process or indicting the charity for any crimes.

a. Denial of Due Process in Blocking Assets Pending Designation

A USA PATRIOT Act provision expanded the government’s authority to seize all of an organization’s assets, by authorizing freezes “pending investigation” to determine whether the entity should be designated.⁹⁶ The statute sets forth no substantive criteria for when such a freeze pending investigation is permitted, requires no notice or opportunity

The counterterrorism legal framework denies charities due process, exposing charities to mistake and abuse.

to respond, and sets no time limit on the freeze. A 9/11 Commission staff report on terrorism financing warned of the Department of Treasury Office of Foreign Assets Control’s (OFAC) authority to freeze organizations’ assets pending investigation:

IEEPA’s provision allowing blocking ‘during the pendency of an investigation’ is a powerful weapon with potentially dangerous applications when applied to domestic institutions. This provision lets the government shut down

an organization without any formal determination of wrongdoing. It requires a single piece of paper, signed by a midlevel government official. Although in practice a number of agencies typically review and agree to the action, there is no formal administrative process, let alone any adjudication of guilt.⁹⁷

To issue a blocking order “pending investigation,” OFAC is not required to give notice that the assets will be frozen or a statement of the reasons for the investigation, and no criminal charges need to be filed. A blocking order against a charity essentially shuts down the charity.



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220
BLOCKING NOTICE

FAC No. SDGT-258248

Kindhearts for Charitable Humanitarian Development, Inc.
3450 West Central Avenue, Suite 366
Toledo, OH 43605

Gentlemen:

You are hereby notified that all property and interests in property of Kindhearts for Charitable Humanitarian Development Inc. (“KINDHEARTS”), including its U.S. representative office and all other offices worldwide, are blocked pending investigation into whether KINDHEARTS is subject to designation pursuant to Executive Order 13224 (66 FR 49079), issued by President Bush on September 23, 2001 (the “Order”), for being controlled by, acting for or on behalf of, assisting in or providing financial or material support to, and/or otherwise being associated with Hamas. This blocking is pursuant to the authorities granted by the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701-06 (“IEEPA”) as amended by the Uniting and Strengthening America by Providing Appropriate Tools to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, Pub. L. No 107-56, 115 Stat. 272 (2001), the Order and 31 C.F.R. Part 594.

A copy of the February 2006 Office of Foreign Assets Control blocking order authorizing the seizure of KindHearts’ assets “pending investigation.” In the over three years since the government froze KindHearts’ assets, the Treasury Department has neither instituted criminal proceedings nor formally designated the charity.

The 9/11 Commission staff found OFAC's use of provisions codified in the USA PATRIOT Act that allow blocking of assets during investigation to be "controversial," and "raises particular concern," noting, "The government is able to (and has, on at least three occasions) shut down U.S. entities without developing even the administrative record necessary for a designation. Such action requires only the signature of a midlevel government official."⁹⁸ The 9/11 Commission staff also noted that "[W]hen the interim blocking lasts 10 or 11 months, as it did in the Illinois charities cases..., real issues of administrative due process and fundamental fairness arise."⁹⁹

Notably, since the 9/11 Commission conducted its inquiry, one interim OFAC blocking order, against the Ohio-based charity KindHearts for Charitable Humanitarian Development (KindHearts), has lasted over three years. OFAC effectively closed down the charity on the basis of a letter that states merely that KindHearts is under investigation. In the years since the government froze KindHearts' assets pending investigation, it has neither instituted criminal proceedings nor formally designated KindHearts as a "specially designated global terrorist" (SDGT).

To this day, OFAC has not provided KindHearts with an adequate statement of the basis for the seizure of its assets nor its provisional designation, has impermissibly relied on classified evidence and hearsay that denies KindHearts a meaningful opportunity to defend itself, and has failed to pursue alternative procedures that could provide KindHearts a fair opportunity to defend itself without cost to the security interests of the United States. The Treasury Department further undermined KindHearts' ability to defend itself by restricting its ability to spend its own funds on its defense, and by seizing all of KindHearts' records and unreasonably restricting KindHearts' access to them.

Former Assistant Secretary of the Treasury, Paul Craig Roberts, who served in the Treasury Department during the Reagan administration, harshly criticized the provisions permitting blocking of assets pending investigation. He told the ACLU, Treasury "officials never actually have to produce any evidence, it's just their assertion, and they can freeze or seize assets.... It's the total unjustified seizing of assets. The Treasury Department doesn't need any evidence when they do these things so it makes it easy for them. It's far outside any American concept of civil liberties or due process. The whole thing reeks of impropriety from start to finish, this arbitrary ruining of institutions and organizations."¹⁰⁰

Charities' legal challenges of blocking orders pending investigation have only recently yielded some successes. A federal court in Portland, Oregon, ruled for the first time, on November 6, 2008, that an order freezing an entity's assets is a seizure under the Fourth Amendment.¹⁰¹ It found that the freeze deprived Oregon-based Muslim charity Al-Haramain Islamic Foundation-USA (AHIF) of any opportunity to use its assets for an extended period (over four years at the time of the decision), and that therefore the seizure would have to satisfy Fourth Amendment scrutiny. The court ordered briefing on this issue, to determine whether the seizure of the charity's assets complied with the basic constitutional requirements enshrined in the Fourth Amendment. The court also found that OFAC had acted in an arbitrary and capricious manner in denying AHIF the right to use any of its blocked assets to defend itself, since OFAC imposed an arbitrary cap on attorney fees.

Case Study: KindHearts for Charitable Humanitarian Development: Assets Seized for Over Three Years, but Never Designated

KindHearts for Charitable Humanitarian Development was established in 2002—after the government shut down a number of Muslim charities—with the express purpose of providing humanitarian aid abroad and in the United States in full compliance with the law. Despite efforts by KindHearts’ officers and directors to ensure compliance with the law, in February 2006, the U.S. Treasury Department’s Office of Foreign Assets Control (OFAC) froze the funds of the charity, stating only that it was “under investigation.” OFAC shut KindHearts down without notice of the basis for the freeze, any hearing, any finding of wrongdoing, or any meaningful opportunity for KindHearts to defend. OFAC then threatened to designate KindHearts as a “specially designated global terrorist” (SDGT) based on classified evidence, again without providing it with a reason or meaningful opportunity to defend itself.

For over three years since the government froze all of the Toledo, Ohio-based charity’s assets pending investigation, which put and kept KindHearts out of operation, it has neither instituted criminal proceedings nor proceeded to formally designate KindHearts as an SDGT. OFAC has effectively closed down the charity on the basis of a letter that states merely that KindHearts is under investigation.

More than a year after OFAC froze KindHearts’ assets, OFAC told KindHearts that it had completed its investigation and had “provisionally determined” to designate KindHearts as an SDGT, yet it never proceeded to designate KindHearts as an SDGT. To this day, OFAC has not provided KindHearts with an adequate statement of the basis for its provisional designation, has impermissibly relied on classified evidence and hearsay that denies KindHearts a meaningful opportunity to defend itself, and has failed to pursue alternative procedures that could provide KindHearts a fairer opportunity to defend itself without cost to the security interests of the United States. The Treasury Department further undermined KindHearts’ ability to defend itself by restricting its ability to spend its own funds on its defense, and by seizing all its records and unreasonably restricting KindHearts’ access to those documents, which KindHearts required to defend itself.

In the meantime, KindHearts’ assets remain frozen and it remains out of business. Press articles refer to the charity as “under investigation for terrorism” and use its reputation to implicate those associated with it. In 2006, six Imams were detained after praying in an airport, one of whom was scrutinized by the media for having donated to KindHearts.

In October 2008, the ACLU filed suit on KindHearts’ behalf to challenge the freeze of the charity’s assets pending investigation and the threatened designation.¹⁰² In October 2008, a federal judge granted the ACLU’s request for an emergency order blocking the government from designating KindHearts as an SDGT without judicial review of the constitutionality of OFAC’s actions.¹⁰³ In ruling to grant KindHearts’ request for copies of the documents seized from their offices, a federal judge highlighted that “the government’s actions against KindHearts have all been *ex parte* and untested in the crucible of adversary proceedings.”¹⁰⁴ The judge agreed to hear KindHearts’ constitutional challenge to the government’s actions and a decision is pending.

b. Denial of Due Process in Designation of Charities

The legal scheme created by IEEPA and E.O. 13224 empowered the federal government to blacklist charities and even individuals with virtually no procedural or substantive safeguards. IEEPA effectively allows the government to shut down an organization without notice, on the basis of classified evidence and without any judicial review. It provides that if a court does review the government's evidence, it may do so in secret and without the presence of the charity (*ex parte* and *in camera*).¹⁰⁵

The legal scheme does not require OFAC to make any statement as to the reasons for designation nor to provide a list of the allegations against the charity. Further, it does not require OFAC to comply with any deadlines for providing notice, and does not identify the burden of proof the agency carries.¹⁰⁶ The government may rely heavily on classified evidence the charity does not have the opportunity to see or rebut, and no criminal charges need to be filed. Furthermore, OFAC is required to provide no notice or hearing before designation; OFAC is merely required to publish notice of designation in the Federal Register. The only measure of process provided is the opportunity for written reply.

In a report on terrorism financing, the 9/11 Commission staff found that the use of IEEPA against domestic organizations “raises significant civil liberty concerns,” noting that IEEPA “allows the government to shut down an organization on the basis of classified evidence, subject only to a deferential after-the-fact judicial review.”¹⁰⁷ The 9/11 Commission staff further explained the civil liberties concerns raised by the broad government power to designate charities, noting, “IEEPA allows the freezing of an organization’s assets and its designation as an SDGT before any adjudication of culpability by a court. The administrative record needed to justify a designation can include newspaper articles and other hearsay normally deemed too unreliable for a court of law.”¹⁰⁸

In the first successful challenge by a designated entity to this legal scheme, a federal court in Portland, Oregon, ruled on November 6, 2008 that OFAC violated a Muslim charity’s due process rights by never providing it with any specification of the factual or legal basis for its proposed designation. Because OFAC gave no reasons for the designation, Al-Haramain Islamic Foundation-USA (AHIF) was forced to guess at what OFAC’s concerns were. Only after AHIF challenged its designation in court did the government come forward with an explanation for why it had been designated, well after AHIF’s time to defend itself had passed. The court stated, “where the government has not leveled specific charges at an organization, the risk of erroneous designation is possible, and the value of additional safeguards is substantial.”¹⁰⁹

IEEPA effectively allows the government to shut down an organization without notice, on the basis of classified evidence, and without any judicial review.

Former Assistant Secretary of the Treasury, Paul Craig Roberts, who served in the Treasury Department under President Ronald Reagan, told the ACLU that the IEEPA designation scheme raises such serious due process concerns he considers it an inappropriate means to sanction terrorism financing. He said, “If they have a case they should bring that case in court and be forced to prove it—it should be proved, with hard evidence and without suborning perjury. I think this is the corruption of justice.... If [the designations of Muslim charities] were justified they could bring the case and wouldn’t need to do any of these arbitrary things without evidence, with an unsupported, unilateral action.... There is no reason to proceed that way if you have the goods on somebody.”¹¹⁰ He added, “I don’t think you should ever be able to go after

anybody without following due process by presenting the evidence and having it heard in court. Otherwise it's just hearsay or just 'the organization is guilty because the Treasury said they are a money-laundering organization for terrorism.' Where's the basis, where's the evidence?"¹¹¹

c. Limited Judicial Review for Designations

IEEPA and E.O. 13224 do not require judicial review of designations. In practice, charities generally are able to challenge designation only after the fact. On review, the government may present classified evidence to the judge in secret, denying designated organizations a meaningful right to review or challenge the evidence against it.¹¹² In addition, courts have generally applied a highly deferential standard to their review of OFAC's actions: whether the agency acted in an "arbitrary and capricious" manner.¹¹³ To date, courts have nearly always upheld Treasury's designation actions and powers.¹¹⁴

Furthermore, before a designated organization can pay an attorney to represent it, the attorney must apply for and obtain a license from OFAC. Designated organizations have no automatic right to use blocked funds to hire defense counsel, but rather must obtain a separate OFAC license first. Although OFAC has sometimes provided licenses in the past to designated charities to hire counsel or use blocked funds for legal fees, more recently OFAC has denied license applications, substantially limiting organizations' ability to obtain legal representation and challenge their designations. Moreover, OFAC has arbitrarily capped attorneys' fees in some cases.

In a report on terrorism financing, the 9/11 Commission staff expressed concern that judicial review for designations is sharply limited, noting, "A designated entity can challenge the designation in court, but its chances of success are limited. The

legal standard for overturning the designation is favorable to the government, and the government can rely on classified evidence that it shows to the judge but not defense counsel, depriving the designated entity of the usual right to confront the evidence against it."¹¹⁵

In the period after September 11, courts generally upheld Treasury's designation actions and powers when charities challenged designations and seizure of assets. In March 2002, the Holy Land Foundation for Relief and Development (HLF) challenged the designation and seizure of its assets. HLF filed an action seeking to enjoin the government from continuing to block its assets, arguing that the SDGT designation and the blockage of its assets and accounts violated the Administrative Procedures Act (APA) and the Religious Freedom Restoration Act (RFRA).¹¹⁶ HLF further asserted that the designation violated the Due Process Clause and Takings Clause of the Fifth Amendment, the Fourth Amendment, and the First Amendment right to freedom of speech and association.¹¹⁷ The U.S. District Court for the District of Columbia rejected HLF's primary arguments and denied the injunction, refusing to consider the evidence HLF submitted in its defense.¹¹⁸ In upholding the Treasury Department's actions, the court noted that its review was limited to considering whether the agency's actions were "arbitrary and capricious." In 2003, the U.S. Court of Appeals for the D.C. Circuit affirmed, relying on classified evidence that was not revealed to HLF or its lawyers.¹¹⁹ The court further held that "HLF has no right to confront and cross-examine witnesses" and that the OFAC designation order "need not disclose the classified information" presented against HLF in a closed hearing.¹²⁰

In June 2002, Illinois-based Muslim charity Global Relief Foundation (GRF) challenged the government's authority to freeze its assets pending investigation. On December 14, 2001, federal agents had raided GRF's offices in Bridgeport,

Illinois. In a warrantless search and seizure under an emergency exception provision in the Foreign Intelligence Surveillance Act (FISA), nearly two dozen officers removed “computers and servers, modems, a cellular phone, hand-held radios, video and audio tapes, cassette tapes, computer diskettes, a credit card imprinter, foreign currency, U.S. mail, photographs, receipts, documents, and records.”¹²¹ OFAC issued a “Blocking Notice and Requirement to Furnish Information” to GRF, which froze, until further notice, the funds, accounts, and business records in which the organization had an interest.¹²² Federal agents invoked IEEPA as amended by the Patriot Act, as well as E.O. 13224, to justify the seizure of assets pending investigation.

The U.S. District Court for the Northern District of Illinois dismissed GRF’s argument by holding that Section 5 of E.O. 13224 gave the President broad powers to conduct “such other actions to be consistent with the national interests of the United States,” which it interpreted to include “blocking the assets of GRF during the pendency of its investigation.”¹²³ GRF appealed the decision in the U.S. Court of Appeals for the Seventh Circuit. However, days before oral arguments, on October 18, 2002, OFAC officially designated GRF an SDGT, rendering GRF’s arguments challenging the seizure of its assets pending investigation moot. Consequently, the court did not address GRF’s arguments on the matter and upheld the denial of preliminary injunctive relief, affirming the district court’s findings on all other matters.¹²⁴

On December 30, 2004, The Islamic American Relief Agency-USA (IARA) filed suit seeking a preliminary injunction against its designation and challenging the seizure of its property and the government’s authority to designate it.¹²⁵ In September 2005, the U.S. District Court for the District of Columbia granted the government’s motions to dismiss all of IARA’s charges, finding that the search and seizure as well as the designation were constitutional and

legal under the expansive executive authority of E.O. 13224 and IEEPA.¹²⁶ Notably, the court indicated that because IEEPA was relevant only in the case

“A designated entity can challenge the designation in court, but its chances of success are limited. The legal standard for overturning the designation is favorable to the government.”

of a national emergency, no due process is afforded designees. The court noted that IARA “could challenge the blocking order by writing a letter to the Director of the OFAC,” although such a letter was impossible for IARA to formulate, as it did not know the allegations against it. IARA was not permitted to see the affidavits supporting the search warrant authorizing the raid of its office, and therefore could not rebut the allegations against it. IARA appealed. The U.S. Court of Appeals for the D.C. Circuit affirmed the lower ruling in February 2007, finding that “[w]e may not substitute our judgment for OFAC’s.”¹²⁷ Noting that, “[w]e owe the executive branch even more latitude than in the domestic context,” the court also found that, “the unclassified record evidence is not overwhelming, but...our review—in an area at the intersection of national security, foreign policy, and administrative law—is extremely deferential.”¹²⁸

d. Flaws in Evidence Used in Designation

In many cases, we can plainly see that certain nongovernmental organizations (NGOs) or individuals who raise money for Islamic causes...are "linked" to terrorists through common acquaintances, group affiliations, historic relationships, phone communications, or other such contacts. Although sufficient to whet the appetite for action, these suspicious links do not demonstrate that the NGO or individual actually funds terrorists and thus provide frail support for disruptive action, either in the United States or abroad.

—9/11 Commission staff,
*Monograph on Terrorist Financing*¹²⁹

Independent U.S. government review of the designation system has exposed the flaws in the evidence the Treasury Department has used to designate U.S.-based Muslim charities. Legal proceedings, both in criminal trials and challenges to designation in federal court, have similarly revealed flaws in evidence used to designate charities. While the government is not required to disclose the evidence against an organization challenging its designation, criminal trials of charities have forced the government to disclose evidence previously kept secret during civil challenges. Further, independent review by foreign governments and courts has revealed flaws in evidence used to designate groups. Independent U.S. government review, legal proceedings, and foreign government review have revealed that the evidence used to designate Muslim charities has included news articles that in some cases do not even mention the charity in question, or intelligence that has been inaccurately and prejudicially translated. These reviews have also demonstrated the Treasury Department lacked significant evidence of terror financing by U.S.-based Muslim charities it designated.

In an independent review of terrorism financing laws, the Government Accountability Office (GAO) found in 2005 that there is a lack of accountability for Treasury's designation and asset blocking actions.¹³⁰ In a report summarizing its findings, the GAO noted, "The lack of accountability for Treasury's designations and asset blocking program creates uncertainty about the department's progress and achievements. U.S. officials with oversight responsibilities need meaningful and relevant information to ascertain the progress, achievements, and weaknesses of U.S. efforts to designate terrorists and dismantle their financial networks as well as hold managers accountable."¹³¹

While there is a lack of accountability for Treasury's designation and asset blocking actions, the limited independent review that has taken place reveals cause for concern, and highlights the need for more robust oversight and due process protections for charities. The 9/11 Commission staff found that there was a rush to designate organizations in the post-9/11 period, and as a result the evidential basis for these designations was weak. According to the 9/11 Commission staff,

The goal set at the policy levels of the White House and Treasury was to conduct a public and aggressive series of designations to show the world community and our allies that the United States was serious about pursuing the financial targets.... As a result, Treasury officials acknowledged that some of the evidentiary foundations for the early designations were quite weak.... Some [in the government] believed that the government's haste in this area, and its preference for IEEPA sanctions, might result in a high level of false designations.¹³²

One proponent of the designation process who participated in this rash of designations told the 9/11 Commission staff, "we were so forward leaning we almost fell on our face."¹³³

Islamic banking and finance expert Ibrahim Warde, professor of international business at Tufts University's Fletcher School and author of *The Price of Fear: The Truth Behind the Financial War on Terror* and *Islamic Finance in the Global Economy*, told the ACLU,¹³⁴

In just about every case that I'm familiar with the kind of evidence that is used [to designate a charity] is quite dubious. In most cases the government is seldom forthcoming when it comes to the evidence, [claiming] we cannot disclose the evidence because we have to protect our sources and our national security. But in memoirs and government reports that have come out we have seen that it is not evidence at all but just assertions by people or groups with ideological interests, or simply press clippings. So all those designations are completely unwarranted because they are not based on any kind of evidence that would hold up in court."¹³⁵

Warde added, "It is a bureaucratic and political ploy used by government agencies. With those charities there would be quotes by so-called 'experts on terrorism financing,' with no knowledge of the Islamic world, no language or cultural skills, just sweeping claims—and OFAC would use this as the basis for its actions."¹³⁶

In the case of Al-Haramain Islamic Foundation-USA (AHIF), a federal court in Portland, Oregon, found that the record OFAC proposed to rely on in designating the charity were "press releases and newspaper articles," and "[m]any of the documents did not refer to AHIF-Oregon by name."¹³⁷ According to the court, the evidence to be used for designation totaled about 260 pages, but "contained many documents seemingly unrelated to AHIF-Oregon, and contained no documents that could be considered the 'smoking gun.'"¹³⁸

In designating Benevolence International Foundation (BIF) and Global Relief Foundation (GRF), OFAC relied on newspaper articles and other evidence

Independent U.S. government review, legal proceedings, and foreign government review have revealed that the evidence used to designate Muslim charities has included news articles that in some cases do not even mention the charity in question, or intelligence that has been inaccurately and prejudicially translated.

that would not be admissible in a judicial proceeding. In an in-depth review of the BIF and GRF designations, the 9/11 Commission staff noted, "BIF's counsel was stunned to see that the administrative record supporting BIF's designation included newspaper articles and other rank hearsay. To BIF and GRF's counsel, experienced lawyers steeped in the federal courts' rules of evidence and due process, the OFAC designation process seemed manifestly unfair."¹³⁹

In its analysis of OFAC's designation of BIF and GRF, the 9/11 Commission staff concluded that, "the investigation of BIF and GRF revealed little compelling evidence that either of these charities actually provided financial support to al Qaeda." It added, "[i]ndeed, despite unprecedented access to the U.S. and foreign records of these organizations, one of the world's most experienced and best 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."¹⁴⁰

In a February 2003 pre-trial ruling days before the criminal trial was to begin against BIF's executive director, Ennam Arnaout, the court held that Arnaout "persuasively argues that a significant amount of the government's...proffer contains materials that are not relevant to him nor probative

of the charges in the indictment(s), but rather are highly prejudicial matters suggesting guilt by association.”¹⁴¹ U.S. District Judge Suzanne B. Conlon said that under the rules of evidence prosecutors had failed to show why many of the accusations in the indictment should be brought to a jury. In dismissing the charges against BIF, Judge Conlon held that the prosecution had “failed to connect the dots” to prove a relationship between BIF,

“The lack of accountability for Treasury’s designations and asset blocking program creates uncertainty about the department’s progress and achievements. U.S. officials with oversight responsibilities need meaningful and relevant information to ascertain the progress, achievements, and weaknesses of U.S. efforts to designate terrorists and dismantle their financial networks as well as hold managers accountable.”

Arnaout, and Osama bin Laden. Hours before the trial was set to begin, Arnaout pleaded guilty to one count of racketeering conspiracy.¹⁴² Judge Conlon pointed out that in the plea agreement, the government dismissed “sensational and highly publicized charges of providing material support to terrorists and terrorist organizations.”¹⁴³ Judge Conlon further noted, “Arnaout does not stand convicted of a terrorism offense. Nor does the record reflect that he attempted, participated in, or conspired to commit any act of terrorism.”¹⁴⁴

The criminal prosecution of Holy Land Foundation for Relief and Development (HLF) has exposed serious flaws in the evidence used to designate

the charity, including inaccurate and misleading translations of documents and tape-recorded conversations. In July 2004, before the first criminal trial of HLF,¹⁴⁵ the charity requested an investigation by the Department of Justice Inspector General, alleging that the designation of HLF relied on secret evidence that included a 54-page FBI memo that HLF said contained incorrect and distorted translations of an Israeli intelligence report.¹⁴⁶ An independent translating service reviewed the declassified evidence and cited 67 discrepancies or errors in translation in a single four-page FBI document.¹⁴⁷ According to the *Los Angeles Times*, other translation discrepancies in the evidence against HLF included a translation from Arabic to Hebrew to English that mistakenly translated the statement by a foundation office manager that “we have no connection to Hamas,” as “charitable funds were ‘channeled to Hamas.’”¹⁴⁸

In addition, the subsequent criminal trial revealed serious discrepancies between the official FBI summary of a 1996 wiretapped conversation and the actual transcripts.¹⁴⁹ The FBI surveillance summary contained inflammatory, anti-Semitic statements attributed to HLF executive director Shukri Abu Baker that were not contained in the actual verbatim transcript of the conversation.¹⁵⁰ Because defense attorneys had received declassified and partially redacted summaries representing only about 10 percent of the conversations recorded by the government, HLF defense attorneys filed requests to declassify evidence against their clients to evaluate whether additional discrepancies existed in the documents.¹⁵¹ U.S. District Judge Joe A. Fish denied defense motions to declassify in whole about ten years’ worth of surveillance tapes so that the defendants could review the transcripts for accuracy by comparing them to the tapes, or identify possible exculpatory information contained in the tapes of their own statements.¹⁵²

In several cases of organizations designated by the Treasury Department, foreign countries reviewed and rejected the U.S. government's claimed bases for designation, further exposing inadequacies of evidence used to designate organizations. For example, in August 2003, OFAC designated the U.K.-based Muslim charity Interpal an SDGT for allegedly supporting Hamas and pressured the U.K. government to designate the charity in kind. Because U.K. regulations afford some process to charities in these circumstances, the independent agency charged with regulating the charitable sector, the U.K. Charity Commission, conducted its own investigation and concluded there was no evidence of wrongdoing.¹⁵³

The Charity Commission announced its scrutiny of Interpal revealed "no evidence to verify allegations that the charity has links to Hamas' political and militant activities," adding "[t]he American authorities were unable to provide evidence to support their allegations."¹⁵⁴ U.S. officials produced only newspaper clippings to substantiate their claims.¹⁵⁵ Simon Gillespie, director of operations at the Charity Commission, said at the time of the closing of their inquiry, "As the independent charity regulator it is our duty to look into serious allegations about charities' link to terrorism. At the same time, we must have sufficient evidence to warrant an inquiry continuing."¹⁵⁶ The Charity Commission had investigated Interpal in 1996 because of similar allegations, and similarly found no evidence to support the allegations, concluding at the time that the charity was a "well-run organization."¹⁵⁷ The chairman of Interpal's trustees, Ibrahim Hewitt, told the U.K. *Daily Telegraph*, "it is disappointing that such unsubstantiated allegations can be made so flippantly."¹⁵⁸ The Charity Commission concluded a third investigation into Interpal in February 2009, again clearing the charity of all accusations and concluding that the charity has committed no wrongdoing.¹⁵⁹

In another case, foreign government review of an OFAC action revealed the weaknesses in evidence used to freeze an organization's assets and proved especially embarrassing. In December 2001, OFAC froze the assets of numerous U.S. and overseas branches of Al-Barakaat, a money remittance agency used by Somalis.¹⁶⁰ Canada, Luxembourg, and Sweden conducted their own investigations of Al-Barakaat, and in all three cases the government audit found there was no evidence supporting the U.S. Treasury Department's allegations. Each government asked the United States for the secret evidence it had against Al-Barakaat, and all the "secret" evidence the Treasury Department furnished was press clippings.¹⁶¹ According to the *Wall Street Journal*, after the Swedish government questioned the U.S. government's evidence against Al-Barakaat, "The Treasury sent Sweden 27 pages of information it said proved the case against the men. Twenty-three pages were news-release material: a packet of background documents on al Barakaat, including a statement by President Bush on al Qaeda and a transcript of a briefing led by Secretary of State Colin Powell."¹⁶²

In evaluating a request for the extradition of the chairman of Al-Barakaat North America, Liban Hussein, a Canadian investigation likewise revealed that the Treasury Department lacked evidence to justify freezing Al-Barakaat's funds. The U.S. government had designated Hussein, and pursuant to United Nations (UN) regulations that allow the freezing of the assets of individuals and organizations who support terrorist organizations, the Canadian government had frozen Hussein's assets. Subsequently, after a "full and thorough investigation" of Hussein, the Canadian Department of Justice concluded that "there are no reasonable grounds to believe Mr. Hussein is connected to any terrorist activities."¹⁶³ A Canadian Justice Ministry spokesman explained, "We looked at the evidence and then it became clear there was no evidence."¹⁶⁴

e. Poor Record in Material Support Prosecutions

The federal government's track record in material support prosecutions is poor, and data suggests that insufficient evidence is a reason. A recent study of material support prosecutions from September 2001 to July 2007 reveals an unusually high acquittal rate for these cases.¹⁶⁵ The Department of Justice's trial conviction rate for all felonies is fairly steady over the years: 80 percent in 2001, 82 percent in 2002, 82 percent in 2003, and 80 percent in 2004.¹⁶⁶ But almost half (eight of 17) of the defendants charged with material support of terrorism under the criminal material support statute (AEDPA § 2339B) who chose to go to trial were acquitted, and three others successfully moved to have their charges dismissed before trial.¹⁶⁷ This disparity suggests that the government is overreaching in charging material support violations for behavior not reasonably linked to illegal or violent activity.

The data is especially troubling given that the median sentence for a conviction at trial for material support under the criminal material support statute (AEDPA § 2339B) is 84 months longer than for a guilty plea to the same offense.¹⁶⁸ That those defendants who risk the additional 84 months in prison are acquitted in almost half of the cases raises a disturbing question of whether the government is using the draconian sentences provided in this Patriot Act-enhanced statute to compel plea bargains where the evidence might not support conviction at trial. Of the 61 defendants whose cases were resolved during the study period, 30 pled guilty to material support and another 11 pled guilty to other charges.¹⁶⁹ Only nine of the remaining 20 were convicted.¹⁷⁰

A 2007 Department of Justice Office of Inspector General report demonstrates that many terrorism-related cases result in charges on immigration violations, minor crimes, or other crimes unrelated

to terrorism.¹⁷¹ For instance, after the closure of Illinois-based Muslim charity Benevolence International Foundation (BIF) in December 2001, the government accused its director, Enaam Arnaout, of operating the charity as a financial front to support al-Qaeda and other groups engaged in armed violence overseas.¹⁷² Four months later, the government indicted Arnaout on charges of perjury, and prosecutors later brought new perjury charges when a federal judge dismissed the original charges. In October 2002, ten months after the raids on BIF, prosecutors finally secured an indictment on conspiracy and racketeering charges. In February 2003, the government dropped terrorism-related charges against Arnaout in exchange for a guilty plea on one count of racketeering conspiracy.¹⁷³

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Some cases against U.S.-based Muslim charities and their leaders or employees have revealed that federal authorities lacked persuasive evidence showing the charity funded terrorism. To date, the U.S. government has successfully prosecuted only one of the six designated U.S.-based Muslim charities on terrorism charges.

ACLU research also demonstrated the government's apparent use of immigration-related charges to sanction charity leaders and employees

in the absence of evidence to indict. The charging of charity leaders and employees with minor immigration violations when there is inadequate evidence to indict raises concern because it creates the perception of ethnic and religious profiling. Furthermore, the government's invocation of terrorism in such cases taints the immigration proceedings and may result in unfair treatment. For example, in December 2001, the Immigration and Naturalization Service (INS) detained the founder and president of Michigan-based Muslim charity Global Relief Foundation (GRF), Rabih Haddad, for overstaying a student visa. After bond hearings that were closed to the press, Haddad's family, and the public, an immigration judge denied bond and ordered continued detention of Haddad.¹⁷⁴ Haddad was held in solitary confinement in immigration detention, and was finally deported after 19 months of detention. A London paper quoted U.S. Representative John Conyers as stating, "The treatment of Rabih Haddad by the Immigration and Naturalization Service over the past several weeks has highlighted everything that is abusive and unconstitutional about our government's scapegoating of immigrants in the wake of the September 11 terrorist attack."¹⁷⁵ To date, neither GRF nor any of its officers or staff members has been criminally charged, nor have they been prosecuted for any terrorism-related offenses.

According to Islamic banking and finance expert Ibrahim Warde, "In most [criminal] cases I've seen there might be some kind of evidence of wrongdoing, typically some kind of financial irregularity, but nothing related to terrorism. It is a bait and switch starting with allegations of links to terrorism financing, then from there it goes to broader money-laundering issues, and in the end the individuals or groups get nailed for typically small financial irregularities."¹⁷⁶ Warde also noted, "In the grand scheme of things the government's record has not been very successful. In most cases the government was unable to prove its case, and when it did it was based on the legal strategy of focusing

on [charges unrelated to terrorism,] for which the defendants could be nailed. If you look at it objectively the claims of terrorism against charities are quite unfair."¹⁷⁷

"It is a bait and switch starting with allegations of links to terrorism financing, then from there it goes to broader money-laundering issues, and in the end the individuals or groups get nailed for typically small financial irregularities."

In its report on terrorism financing, the 9/11 Commission staff found that the government's practice of bringing charges for crimes unrelated to terrorism creates the perception of ethnic and religious profiling and raises constitutional concerns: "When terrorism charges are not possible, the government has brought nonterrorist criminal charges against those suspected of terrorism financing. Such an approach, while perhaps necessary, leaves the government susceptible to accusations of ethnic or religious profiling that can undermine support in the very communities where the government needs it most. Moreover, ethnic or geographic generalizations, unsupported even by intelligence, can both divert scarce resources away from the real threats and violate the Constitution."¹⁷⁸

Case Study: Global Relief Foundation: Use of Immigration Charges in Absence of Evidence to Indict

Founded in 1992 and headquartered in Illinois, the Global Relief Foundation (GRF) was one of the largest non-profit Muslim charities in the U.S., funding humanitarian aid programs in over 20 countries throughout the world.¹⁷⁹ In December 2001 federal agents raided GRF's offices and the charity's assets were seized pursuant to an OFAC blocking order pending investigation. To this day, neither GRF nor any of its officers or staff members has been criminally charged, nor have they been prosecuted for any terrorism-related offenses. Nonetheless, the designation and accusations have had devastating effects, particularly for GRF founder and president, Rabih Haddad. Haddad's case raises concern because his immigration hearings were closed to the public and press, and decisions regarding Haddad's detention and the merits of his asylum claim were apparently unfairly affected by the government's claims that Haddad was a threat to national security. The mere invocation of terrorism by the government tainted the immigration proceedings in Haddad's case.

Haddad was arrested the day of the December 2001 raids on charges of overstaying his visa.¹⁸⁰ At the time, his visa was expired and he was in the process of applying for permanent residency.¹⁸¹ Haddad's bond hearing was held on December 19, 2001 and was closed to the public at the last minute.¹⁸² Following that closed hearing, Judge Hacker denied bail and ordered Haddad detained.¹⁸³ While Haddad remained detained, frequently in solitary confinement for 23 hours a day, he, several newspapers, and U.S. Representative John Conyers challenged the closure of the hearing.¹⁸⁴ Haddad prevailed in the U.S. District Court for the Eastern District of Michigan in April 2002, and the decision was affirmed three months later in August 2002.¹⁸⁵ In announcing the decision of the three-judge panel of the U.S. Court of Appeals for the Sixth Circuit, Judge Damon J. Keith accused the government of trying to place its actions "beyond public scrutiny," adding that "democracies die behind closed doors."¹⁸⁶

Subsequently, Haddad filed a number of motions aimed at obtaining a new bond hearing before an impartial judge.¹⁸⁷ In September 2002, his motion was granted, and the U.S. District Court for the Eastern District of Michigan ordered the government to either release Haddad from detention or hold a new detention hearing open to the public and before a new immigration judge. Meanwhile, his removal hearing, originally scheduled for August 2002, was repeatedly postponed at the government's request. Despite the previous rulings ordering Haddad's bond hearings to be open to the public, Haddad's rescheduled bond hearing in October 2002 was again closed to the public.¹⁸⁸ In response to an emergency motion filed by Haddad, the U.S. District Court for the Eastern District of Michigan ordered the Immigration Judge to provide the particular reasons for the closure to his attorneys.¹⁸⁹

Haddad's immigration hearing to consider his request for asylum was scheduled for October 2002. In the middle of these proceedings, the government designated GRF an SDGT, leading critics to charge the timing was purposeful. On October 24, 2002, Haddad was again denied bond, and on November 22, 2002, he was denied asylum. In denying his request for asylum, Judge Newberry cited his ties to GRF and claimed that Haddad was a "danger to the U.S."¹⁹⁰ Haddad immediately filed an appeal with the Board of Immigration Appeals. After 19 months of detention, Haddad was finally deported in July 2003, with no notice to his family or attorney. He called his family from Amsterdam to tell them of the deportation. His family was deported a few weeks later.¹⁹¹ GRF remains inoperable and Haddad is prohibited from ever returning to the U.S.

f. Public Naming of Unindicted Co-conspirators

In its prosecution of the Texas-based Holy Land Foundation for Relief and Development (HLF), the Department of Justice took the extraordinary step of publicly filing a list naming 246 individuals and organizations as “unindicted co-conspirators” (UCCs) in an attachment to a pre-trial brief (UCC list). Government lawyers named individuals, including past associates of HLF, and some of the country’s largest, mainstream Muslim organizations as unindicted co-conspirators in the criminal case alleging that HLF provided material support for Hamas. Government lawyers made these inflammatory charges against a number of individuals and organizations that have not been charged with any crime, without affording the named individuals and groups the ability to defend themselves or clear their names. By branding these individuals and organizations with the “terrorism” label, the government unfairly and irreparably damaged the reputation of mainstream Muslim organizations and many of the named individuals.

Among others, government lawyers publicly identified as co-conspirators the Islamic Society of North America (ISNA), America’s largest mainstream Muslim community-based organization; the North American Islamic Trust (NAIT), a charitable trust that holds title to religious properties and facilitates the ability of American Muslims to practice their faith; and the Coalition on American-Islamic Relations (CAIR), America’s largest Islamic civil liberties group. In June 2008, the ACLU filed a motion on behalf of ISNA and NAIT, in federal court, asking the court to declare the government’s public naming of ISNA and NAIT as unindicted co-conspirators to be a violation of their Fifth Amendment rights; to order the expunging of the organizations’ names from any public record filed or issued by the government that identifies these groups as unindicted co-conspirators; and to block the government from labeling ISNA and NAIT this way in the future without specific permission from the court. CAIR filed a

similar motion asking the court to strike the organization’s name from the UCC list.¹⁹² At the time of this writing, the motions had not yet been decided.

In its brief on behalf of ISNA and NAIT, the ACLU noted that the government has conceded it had absolutely no evidence to show that either ISNA or NAIT had engaged in a criminal conspiracy. The lead prosecutor in the HLF case told lawyers for the two organizations “that ISNA and NAIT were not subjects or targets in the HLF prosecution or in any other pending investigation.”¹⁹³ The prose-

By branding individuals and organizations with the “terrorism” label, the government unfairly and irreparably damaged the reputation of mainstream Muslim organizations and many of the individuals named unindicted co-conspirators.

cutor also acknowledged that the public labeling was simply a “legal tactic” intended to allow the government to introduce hearsay evidence against HLF later at trial. The Department of Justice’s U.S. Attorneys’ Manual instructs U.S. Attorneys not to name unindicted co-conspirators in indictments and directs U.S. Attorneys to avoid publicly naming unindicted co-conspirators.¹⁹⁴

Michael Kinnamon, Secretary General of the National Council of Churches, said in a statement, “Without the opportunity to defend themselves, ISNA has been presented to the public as guilty until proven innocent: a violation of their Fifth Amendment rights. The label of ‘co-conspirator’ is damaging to the excellent reputation of ISNA and those who collaborate with them to build a better America.”¹⁹⁵ In another statement criticizing the naming of ISNA as an unindicted co-conspirator,

the Union for Reform Judaism noted, “This charge includes no accusation of wrongdoing by ISNA, yet it nonetheless has a clear connotation of guilt which could greatly hurt the organization in its work to advance the cause of justice in our country.... Because ISNA is one of the nation’s largest Muslim umbrella organizations, the charge is also damaging, and has a chilling effect on, the entire American Muslim community.”¹⁹⁶

In interviews with the ACLU, American Muslims repeatedly pointed to the UCC list as a deeply problematic smearing of the nation’s largest, mainstream Muslim organizations. By connecting these organizations with a criminal terrorism case, and by publicly linking the organizations and individuals with groups such as the Muslim Brotherhood, the UCC list smeared these mainstream organizations. One Muslim-American Texan told the ACLU,

The UCC list listed everybody and their mother. Look at the list: it has the top jihadis, most extreme people, but also non-political, non-violent Muslims. It includes CAIR, which does advocacy on behalf of Muslims; ISNA, which is the oldest Muslim organization and the Muslim educational organization in this country; and NAIT, which is a trust that holds the deeds of mosques, billions of dollars. By listing these groups, you are taking my association, my education, my trust. What it says is I don’t want you to have any advocacy, any education, or to own anything.¹⁹⁷

According to one community activist in Texas, “The UCC list is a nuclear bomb, public relations-wise. In the cases of CAIR, NAIT, and ISNA, the media, Congress, and all their adversaries in the blogospheres refer to them as unindicted co-conspirators.”¹⁹⁸

Many Muslims told the ACLU that the release of the UCC list has added to the climate of fear among American Muslims and their apprehensions that the U.S. government has a policy of imposing guilt on Muslims by association. One American Muslim

in Texas told the ACLU, “When the government made the list of unindicted co-conspirators, including NAIT and ISNA, it really created fear, because these are mainstream organizations, umbrella organizations. People view these as mainstream, liberal groups, and they see those being targeted.”¹⁹⁹ He added, “Every association with NAIT and ISNA is [considered] bad because they are on the UCC list. Number one, we are talking about suspicion and perception.... People fear that if the government wins the HLF case, it will then go after NAIT. Guilt by association, other than the McCarthy era, it is something that is not supposed to happen in this country.”²⁰⁰

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According to the president of the Dallas-Fort Worth chapter of CAIR, contributions to the CAIR chapter have dropped as a result of the naming of CAIR as an unindicted co-conspirator. He explained that the naming of CAIR as an unindicted co-conspirator has had far-reaching implications for the local chapter: “Contributions to CAIR have gone down, so we can hire fewer people, can run fewer activities. People are afraid to come to events. Mosques are also hesitant to open the doors to us, to the organization. In Richardson the mosque doesn’t even want the administration of CAIR to come and pray there, because of fear.... People don’t want to serve on the board. They say they support us and want to help, but they don’t want to be named as a member of the board. People don’t want a letter or newsletter from CAIR coming to their house—they don’t want their name on the mailings.”²⁰¹ In addition, a coalition of Muslim groups announced

in March 2009 that it believed the FBI's recent decision to sever ties with CAIR pending the resolution of unspecified "issues" stemmed from the designation of CAIR as an unindicted co-conspirator.²⁰²

Individuals named unindicted co-conspirators in the HLF case reported experiencing trouble getting jobs, and in one case a divorced man's custody and visitation with his children was being reviewed in family court partly on account of his naming as an unindicted co-conspirator. One individual named an unindicted co-conspirator in the HLF case said, "I was unemployed for one full year. I was judged personally. I sent so many resumes.... I have applied for jobs, and several times I talked to them and afterward they don't even give me a call back. I bet they do a background check. This devastated me financially."²⁰³ Another individual labeled an unindicted co-conspirator in the HLF case told the ACLU she similarly encounters employment difficulties because of being named an unindicted co-conspirator: "I can't get another job in this country. A headhunter told me that she saw my name [on the UCC list] on the internet and she dropped me. I get to the final third round of job interviews and then they drop me. Because of my name I can't get a job, because now part of your due diligence you scan the internet before hiring."²⁰⁴

Another individual listed as an unindicted co-conspirator in the HLF case told the ACLU, "I live in fear to this day—this changed my life, and my family's life, and my kids' lives. It is an everyday agony; we have to face the unknown, every day asking 'what's next?'"²⁰⁵ He said of being named to the UCC list, "I am in shock. I don't know what that means. I have no idea what my rights are, what I am accused of, what is my crime."²⁰⁶

g. Charities Held Liable for Damages in Unrelated Foreign Terrorism Lawsuits

The charitable assets of designated Muslim charities have become targets of lawsuits for damages in unrelated foreign terrorism cases. In a tangential lawsuit seeking to hold the Holy Land Foundation for Relief and Development (HLF) accountable for alleged terrorist acts committed by Hamas, the district court relied in part on the designation of HLF in holding the charity liable for damages.²⁰⁷ In 2004, the U.S. District Court for the Northern District of Illinois ordered HLF, along with a number of other Muslim groups and individuals, to pay \$156 million to the parents of David Boim, an American-Israeli teenager who was killed in a Hamas attack in the West Bank in 1996.²⁰⁸

In finding the organizations liable for "aiding and abetting" Hamas, the district court relied on the OFAC designation of HLF and the U.S. Court of Appeals for the D.C. Circuit's affirmation of the designation.²⁰⁹ The 2004 ruling preceded the 2007 and 2008 criminal trials of HLF, as well as its November 2008 conviction on charges of providing material support for terrorism (detailed in section V of this report). Moreover, the district court relieved the Boims, the plaintiffs, of the burden of showing that the defendants' actions were a cause in fact of the killing, holding that the "incontrovertible" evidence the federal court reviewing the OFAC designation used to determine that HLF had funded, directly or indirectly, Hamas, was enough to hold them accountable.²¹⁰ Notably, the district court did not find any direct ties between HLF and Hamas.

The district court also relied heavily on the Treasury Department's allegations in designating HLF, and allowed otherwise inadmissible hearsay evidence. Because the district court imposed no requirement on the Boims to show any illegal intent, the case generated fear among humanitarian nonprofits that the district court's decision may

open charitable nonprofits to long-reaching liability based on indirect ties, rather than on evidence of illegal intent.

The U.S. Court of Appeals for the Seventh Circuit subsequently set aside the judgment award in December 2007, noting “Belief, assumption, and speculation are no substitutes for evidence in a court of law. However the plaintiffs might establish a line of proof connecting the defendants with the murder of David Boim, the law demands that they demonstrate such a nexus before any defendant may be held liable for David’s death. We must resist the temptation to gloss over error, admit spurious evidence, and assume facts not adequately proved simply to side with the face of innocence and against the face of terrorism.”²¹¹ In the three-judge panel decision, the court emphasized that in determining whether or not HLF could be held lia-

activities in a way that had some causal connection with David’s murder, which occurred before HLF was even designated an SDT and SDGT.²¹²

After rehearing the case, on December 3, 2008, the full (*en banc*) U.S. Court of Appeals for the Seventh Circuit reversed the three-panel December 2007 decision with respect to HLF and remanded to the district court for further proceedings to determine HLF’s liability.²¹³ The full court overturned the three-panel ruling, finding that victim-of-terrorism plaintiffs in civil damages suits do not have to show that HLF had intended the funds to lead to terrorist acts nor do they have to show a causal link between the aid provided and the terrorist activity, but merely must prove that HLF provided material support to Hamas, “knowing the organization’s character.”²¹⁴ The new decision finds that parties that contribute to groups that commit terrorist acts can be held liable for damages notwithstanding a lack of intent by the donor or the materiality of the contribution.²¹⁵

“Our own response to a threat can sometimes pose as much of a threat to our civil liberties and the rule of law as the threat itself.”

ble for the death, the plaintiffs bore the burden of proving that HLF had intended the funds to lead to terrorist acts. While reaffirming the designation, it noted that the criteria for designation under E.O. 13224 were far broader than those in determining liability for a criminal act:

Nothing that this court, the district judge, or a jury might say in this case would affect HLF’s designation as an SDT or SDGT or confine the government’s ability to rely on that designation in the future. The validity of the designation is not at stake here. Instead, this suit looks backward to determine whether HLF knowingly and intentionally supported Hamas’s terrorist

Arguing that the majority had “eliminated...the basic tort requirement that causation be proven,” dissenting Judge Ilana Rovner wrote that the *en banc* court was “following a path that portends sweeping liability for those individuals and groups who give their support to the humanitarian activities and affiliates of terrorist organizations but who may have no intent to support terrorism and whose actual link to terrorism has never been evaluated by a factfinder.”²¹⁶ She cautioned, “Our own response to a threat can sometimes pose as much of a threat to our civil liberties and the rule of law as the threat itself.”²¹⁷

Other suits against Muslim charities are pending, and some Muslim donors were aware of the Boim case and told the ACLU they feared that their charitable donations could be diverted to help pay judgments in unrelated foreign terrorism lawsuits.

V.

Discriminatory Enforcement of Counterterrorism Laws Against American Muslim Charities

The federal government's enforcement of terrorism financing laws has disproportionately affected American Muslim charities. The ACLU has documented nine U.S.-based Muslim charities that have closed as a result of government action or investigation. These charities were located in Texas, Michigan, Missouri, Illinois, Oregon, Ohio, Massachusetts, and New York. Of nine U.S.-based charities whose assets have been seized by the Department of Treasury, seven are Muslim charities (the two non-Muslim charities are Tamil Rehabilitation Organization-USA and Tamil Foundation, U.S.-based Tamil charities that provided humanitarian aid in Sri Lanka). To date, only three designated U.S.-based Muslim charities have faced criminal prosecution, only one of which has been convicted. Many American Muslim community leaders and members have pointed to the disproportionate enforcement of counterterrorism laws against American Muslim charities as evidence of discriminatory, religion-based targeting of Muslims and their charitable organizations.

Six American Muslim charities have been shut down pursuant to designation as terrorist organizations by the Treasury Department: Al Haramain Islamic Foundation-USA (Oregon, SDGT-tax exemption revoked), Benevolence International Foundation (Illinois, SDGT-tax exemption revoked), Global Relief Foundation (Illinois, SDGT-tax exemption revoked), Holy Land Foundation for Relief and Development (Texas, SDGT-tax exemption revoked), Islamic American Relief Agency-USA (Missouri,

SDGT-tax exemption revoked), and Goodwill Charitable Organization (Michigan, SDGT-tax exemption revoked). A seventh U.S.-based Muslim charity has closed due to an OFAC blocking order but still has not been designated over three years later: Kind-Hearts for Charitable Humanitarian Development (Ohio, SDN-remains tax exempt but assets frozen). This charity is included on the Specially Designated Nationals and Blocked Persons (SDN) list, an umbrella list compiled by the OFAC that includes groups that had their assets blocked pending investigation without having been given a formal terrorist designation.

In addition, at least six U.S.-based Muslim charities, including KinderUSA (Texas), Life for Relief and Development (Michigan), Al-Mabarrat (Michigan), Child Foundation (Oregon), Help the Needy (New York), and Care International (Massachusetts) have been declared under investigation or raided. These charities have not been designated nor had their assets seized pursuant to a blocking order,

Many American Muslim community leaders and members have pointed to the disproportionate enforcement of counterterrorism laws against Muslim charities as evidence of discriminatory, religion-based targeting of Muslims and their charitable organizations.

but have suffered as a result of publicly announced investigations, law enforcement raids, and intrusive surveillance. The ACLU has documented that public law enforcement raids of Muslim charities have substantially disrupted their operation, scaring off donors in the absence of indictable evidence of wrongdoing.

a. Discriminatory Enforcement against American Muslim Charities

The vague and overbroad material support laws afford federal officials wide discretion in selecting organizations for designation and seizure of their assets, opening the door to discriminatory and arbitrary enforcement of these laws. Of nine U.S.-based charities whose assets have been seized by the Department of Treasury, seven are Muslim charities.²¹⁸ Because the Treasury Department's enforcement actions against U.S.-based organizations have disproportionately impacted Muslim charities, many in the Muslim community have charged that the federal government is discriminatorily targeting Muslim charities.²¹⁹ As a Muslim community attorney pointed out to the ACLU, "How many Jewish or Christian charities that work in troubled areas are being investigated? None!"²²⁰

"I think the attack on the Muslim charities was just easy, it was an easy, soft target."

By a former Treasury Department official's own admission, Treasury has targeted Muslims for enforcement of terrorism financing laws. A former Department of Treasury official who asked not to be named told the ACLU, "We are not going into Irish bars looking for people who support the IRA right now. There is a reason that we are focusing on the Muslim community. There is a greater proportion of Muslims engaged in ethnic terror than other groups. Everybody knows [targeting Muslim charities is] not baseless."²²¹ Former Assistant Secretary of the Treasury, Paul Craig Roberts, who served in the Treasury Department under President Ronald Reagan, observed, "I think the attack on the Muslim charities was just easy, it was an easy, soft target."²²²

Beyond American Muslims' perception of discriminatory targeting of their community, it is clear that the federal government is unequally enforcing terrorism financing laws. The federal government's markedly different treatment of for-profit organizations that have clearly violated terrorism financing laws demonstrates that these laws are unequally enforced. For instance, in contrast to the treatment of U.S.-based Muslim charities, Chiquita Brands International was asked to pay a fine of \$25 million following its payment of \$1.7 million directly to two designated terrorist groups in Colombia between 1997 and 2004.²²³ Chiquita admitted to these payments in 2003, but no criminal charges were filed against the organizations, its assets were never seized or frozen, and Chiquita continues to operate.²²⁴ In another example of contrasting treatment, OFAC has never designated Halliburton nor frozen its assets despite the company's conduct of business with Iran, a designated state sponsor of terrorism.²²⁵

The designation of the Texas-based Muslim charity Holy Land Foundation for Relief and Development (HLF) also raises concerns about the unequal treatment of the Muslim charity, which was charged with providing support to charity committees in the West Bank and Gaza Strip, while other aid organizations and agencies that have contributed to the same charity committees as HLF have not been designated nor indicted. Unlike Chiquita, which had directly funded two designated terrorist groups, the federal government designated and later criminally prosecuted HLF for supporting non-designated charity groups.

Case Study: Holy Land Foundation for Relief and Development: Criminalizing Support for Non-Designated Charities

In December 2001, the Texas-based Holy Land Foundation for Relief and Development (HLF), then the nation's largest Muslim charity, was shut down when it was designated a terrorist organization. In announcing the designation, President Bush charged in a December 2001 press conference that " Hamas has obtained much of the money that it pays for murder abroad right here in the U.S., money originally raised by the Holy Land Foundation."²²⁶ "The Holy Land Foundation claims that the money it solicits goes to care for needy Palestinians in the West Bank and Gaza," Bush said. Instead, he said, the funds were "used by Hamas to support schools and indoctrinate children to grow up to be suicide bombers" and to "recruit suicide bombers and to support their families."²²⁷

The government never produced evidence to support President Bush's accusations. By the time of the 2007 criminal trial against the charity and five of its leaders, prosecutors no longer claimed HLF provided direct support to Hamas or for violent acts. Nor did the U.S. government allege



In December 2001, the Texas-based Holy Land Foundation for Relief and Development, then the nation's largest Muslim charity and in operation for over a decade, was shut down when it was designated a terrorist organization. The government seized the charity's assets during the Muslim holy month of Ramadan, at the height of annual Muslim charitable giving. (Mark Graham/New York Times)

that HLF intended to support terrorism or that its funds were actually used for that purpose. Instead, prosecutors admitted all the money went to charitable aid. At trial, prosecutors charged HLF with providing funds to local charitable groups known as Zakat committees that delivered the humanitarian aid in the West Bank and Gaza Strip.²²⁸ During the trial, the government did not argue that the HLF directly supported terrorist groups, as the Zakat committees were not designated terrorist organizations.²²⁹ While the local charities were not themselves designated terrorist organizations, the government alleged that the charity committees were controlled in whole or part by Hamas, and distributed aid to recipients “who then associated this social outreach with Hamas.”²³⁰ The government nonetheless sought to impose extended criminal sentences on HLF’s leaders.

As of the writing of this report, the government has not designated the Zakat committees, although the Treasury Department has known about these groups at least since HLF was indicted in 2004. At trial, defense attorneys presented documentary evidence and testimony (from a former U.S. diplomatic official) that some of the same Zakat committees HLF is charged with supporting have received aid from the International Committee of the Red Cross, the U.S. Agency for International Development, the European Commission, and United Nations agencies including the United Nations Relief and Works Agency.²³¹ Further, as a defense witness in the criminal trial against HLF, Edward Abington, former consul general at the U.S. Consulate General in Jerusalem and the State Department’s second-highest-ranking intelligence official, testified that during his years working in the region, when he received daily CIA briefings and personally visited each of the Zakat committees later named in the indictment against HLF, he never received information suggesting that the Zakat committees aided by HLF were controlled by Hamas.

Other allegations that formed the bases of HLF’s designation raised further concerns of discriminatory enforcement against HLF. In Senate testimony regarding the designation of HLF and before the criminal indictment of HLF, HLF’s defense attorney John Boyd testified that in designating HLF a terrorist organization, the Department of Treasury relied on an FBI memorandum that pointed to HLF’s financial support for a hospital in Jenin, in the West Bank, but it did not mention that the U.S. Agency for International Development had also assisted the same hospital in April 2002.²³² According to Boyd, the Department of Treasury also relied on HLF’s provision of aid to over four hundred Palestinian deportees who were stranded in southern Lebanon during the winter of 1992-93. But the U.S., Britain, the United Nations, the International Committee of the Red Cross and other countries had also provided aid to that group of refugees.

The 2007 criminal trial against HLF and five of its leaders lasted more than three months and involved documents and electronic surveillance gathered by federal agents over nearly 15 years, yet federal prosecutors were unable to gain a conviction on any of the 197 counts, and the judge declared a mistrial on October 22, 2007.²³³ The jury came to a unanimous decision acquitting one defendant, Mohammad El-Mezain, HLF’s original chairman and endowments director, on 31 out of 32 counts.²³⁴ The verdict that was initially announced acquitted one defendant, Mufid Abdulqader, on all 32 charges against him, and acquitted defendant Abdulrahman Odeh on all but two of the 32 charges against him, deadlocking on the remaining two charges.²³⁵ However, after the judge polled the jury, three jurors disagreed with those verdicts, and ultimately two jurors refused to

validate the initial verdicts for Abdulqader and Odeh.²³⁶ The jury deadlocked on charges against HLF and was reportedly evenly split on charges against its principal leaders, former chairman Ghassan Elashi and Shukri Abu-Baker, the charity's former chief executive.²³⁷

After the first trial, juror William Neal told the Associated Press the case against HLF "was strung together with macaroni noodles. There was so little evidence."²³⁸ Another juror, Nanette Scroggins, told the Los Angeles Times, "I kept expecting the government to come up with something, and it never did.... The whole case was based on assumptions that were based on suspicions."²³⁹ Observers opined that the government's novel theory of liability for support of non-designated charitable groups was a reason for the failure to obtain any conviction against HLF or its leaders.²⁴⁰

However, on November 24, 2008, after a three-month retrial, the charity and five of its leaders were convicted on all 108 criminal counts, including charges of material support for terrorism. The retrial resulted in convictions even though prosecutors again admitted that all funds went to local charity committees that were never on government watch lists. On retrial, prosecutors dropped the charges from 197 to 108 counts of material support for terrorism, money laundering, conspiracy, and tax fraud. On retrial, U.S. District Judge Jorge A. Solis admitted into evidence three exhibits that had been excluded as hearsay from the first HLF trial. While there was a different judge in the retrial and some new witnesses, the prosecution and defense's basic arguments were the same as in the first trial.²⁴¹ Former Dallas federal prosecutor Tom Melsheimer told the Dallas Morning News after the convictions, "To spend millions of dollars in time and expenses to prosecute people who were of no real threat to anyone, under the banner of a terrorism case, is a waste of precious federal resources."²⁴² He added, "I think this case proves that, with enough effort, the federal government can convict nearly anyone."²⁴³

Attorneys for HLF and the defendant leaders said they would appeal the verdicts. Defense attorney Nancy Hollander, who represented Shukri Abu-Baker, told the New York Times, "Our clients were not even allowed to review their own statements because they were classified—statements that they made over the course of many years that the government wiretapped."²⁴⁴ She added, "They were not allowed to go back and review them. There were statements from alleged co-conspirators that included handwritten notes. Nobody knew who wrote them; nobody knew when they were written. There are a plethora of issues."²⁴⁵ On May 27, 2009, the defendants were sentenced to prison terms ranging from 15 to 65 years.²⁴⁶ As of the writing of this report, defense attorneys had filed notices of appeal for all the individual defendants, and are in the process of preparing the appeals.

b. Disruptive Investigation or Public Raid of American Muslim Charities

At least six U.S.-based Muslim charities run by American Muslims, including KinderUSA (Texas), Life for Relief and Development (Michigan), Al-Mabarrat (Michigan), Child Foundation (Oregon),²⁴⁷ Help the Needy (New York),²⁴⁸ and Care International (Massachusetts) have been raided by a Department of Justice Joint Terrorism Task Force (JTTF) and in some cases declared under investigation. Two of these charities, Help the Needy and Care International, closed after charges unrelated to terrorism were brought against their leaders.²⁴⁹ In none of these cases has the charity been designated a terrorist organization or had its assets seized pursuant to a Treasury Department blocking order. In none of these cases has the charity or its leaders been indicted for or convicted of any terrorism-related crimes.

Public announcements of investigations and raids of charities can undermine donors' confidence, provoke fear among donors that they may be held liable for now-lawful donations to these charities, tarnish these charities' reputation, and substantially disrupt these charities' operations because of media reports that implicitly or overtly suggest that these investigations were tied to terrorism.

ACLU research reveals that public announcements of law enforcement investigations and raids of charities can undermine donors' confidence in these charities, provoke fear among donors that

they may be held liable for now-lawful donations made to these charities, tarnish these charities' reputation, and substantially disrupt these charities' operations because of media reports that implicitly or overtly suggest that these investigations were tied to terrorism. And yet none of these six charities has been indicted for any terrorism-related crime, none has had its assets seized pursuant to an OFAC blocking order, and none has been designated a terrorist organization. In some of these cases federal officials clarified to charity leaders and attorneys that the investigations had nothing to do with terrorism and instead focused on compliance with federal statutes and regulations, including tax laws and Treasury regulations governing transactions with foreign countries under embargo.

In the case of KinderUSA, a Texas-based Muslim charity that provides humanitarian aid overseas, the Dallas U.S. Attorney's office began conducting a grand jury investigation of the group in November 2004 and subpoenaed business records of KinderUSA at that time. KinderUSA provided these records and fully cooperated with the grand jury. The grand jury took no action, no charges were made, and the U.S. Attorney's office in Dallas made no requests for further information. However, because of media reports that unaccountably linked the investigation to terrorism, KinderUSA suffered substantial disruption of its operations. Donations dropped from \$1.6 million in 2004 to \$250,000 in 2005, KinderUSA lost donors, all donations from mosques ended in 2004, and two board members resigned.²⁵⁰ Staff shrank from seven full-time employees, to one full-time director and one part-time employee.²⁵¹ According to KinderUSA's executive director, as a result of the public investigation and tarnishing of the charity, "Many of our donors are frightened and as a consequence of the government's harassment, many of our donors stopped giving. Often, I see former donors and they feel compelled to apologize to me stating, 'you have to understand.' They are just afraid, period."²⁵²

Despite the damage caused by the public investigation of KinderUSA and despite the obvious lack of indictable evidence of wrongdoing, the U.S. Attorney's office has not publicly cleared the charity. According to KinderUSA's executive director, "Each grand jury is hired for 18 months, so the November 2004 grand jury is obviously over. The government could have seated another grand jury, but that would also be complete by now. The government refuses to indicate whether there was evidence to indict or not—nothing has happened, and the U.S. government hasn't said anything. People know this, and because the government would never say we investigated this organization and found they've done nothing wrong, this keeps that fear persisting. You're always under investigation."²⁵³ In a letter to the *Wall Street Journal* on behalf of KinderUSA, Ohio attorney John Kilroy wrote, "The conclusion reached by me and by my client is that the 'investigation,' if you could call it that, concluded long ago."²⁵⁴

According to Laila al-Marayati, president of the board of directors of KinderUSA, "You're always waiting, they can come in at a moment's notice.... You never know what will happen, and there's not a single thing you can do to prevent it, because they don't have to show probable cause like they would in another case. They don't have to show you anything, plus they can use secret evidence and you can't refute it. To function under that cloud, you can't think about it because it would inhibit you. If you talk about it, it scares the donors. Whether KinderUSA will be able to recover, it's hard to overcome that because the donors are fearful."²⁵⁵ KinderUSA continues to deliver nearly \$1 million in humanitarian aid annually to needy children worldwide, about half of what the charity delivered before the investigation.²⁵⁶

In the case of Life for Relief and Development (LIFE), a Michigan-based Muslim charity that is known as the largest U.S.-based American Muslim charity currently in operation, on September 18, 2006, a Department of Justice Joint Terrorism

Task Force raided its offices. The raid took place during the week before the month of Ramadan, in which LIFE ordinarily receives about 40 percent of its annual cash donations. During the raid law enforcement officials seized several computers and nearly 200 boxes of paperwork necessary to LIFE's operations.²⁵⁷ The government initially wanted LIFE to pay \$100,000 to cover the costs of reproducing documents LIFE required to file its tax returns, but the fees were substantially reduced after judicial intervention.²⁵⁸

Local media showed up at the raid and covered it extensively. At the time of the raid, FBI agents told LIFE leaders that the raid was totally unrelated to terrorism, and since then the charity has never been designated nor has OFAC issued a blocking order to seize the charity's assets.²⁵⁹ A grand jury investigation from late 2007 to early 2008 resulted in no indictments against the charity or its leaders, but rather a single indictment against a former employee of LIFE for alleged activities in violation of the Iraqi sanctions of the 1990s when he was not employed at LIFE and other alleged crimes wholly unrelated to terrorism. While federal officials maintained a week after the raid that donations to the charity remained legal, the government has never stated that LIFE has been cleared of wrongdoing.²⁶⁰

The public raid substantially disrupted LIFE's operations. After the raid, Comerica Bank informed LIFE that it planned to terminate their seven bank accounts within two weeks. According to an attorney representing LIFE, Shereef Akeel, Comerica's action appeared to be prompted by media reports of the raid, since Comerica's announcement of the closure of accounts the charity had held for over ten years occurred weeks after the raid.²⁶¹ According to Akeel, because of Comerica's closure of its accounts, "LIFE couldn't wire monies—imagine trying to run humanitarian operations if you can't write a check.... The bank issue crippled its operations; it didn't die, but it crippled it."²⁶² Akeel told the ACLU that LIFE was only able to resume operations

because another bank agreed to hold the charity's accounts, noting "that saved LIFE because without a bank LIFE would have been dead."²⁶³

"What sinks in, in people's minds, is the experience they are witnessing. So even if in three years a court finds the charity innocent, by that time the charity is done, placed on a slow-death machine because the charity's image and reputation are assassinated."

LIFE's in-state donations were substantially affected by the raid, declining about 50 to 60 percent, according to Akeel.²⁶⁴ Out-of-state donations were not affected as substantially, which Akeel attributed to the fact that while local media had reported the raid, national media outlets had not covered it. According to one Michigan Muslim community leader, the raid on LIFE "caused significant damage to the point where local mosques that used to allow them to come in to do fundraisers no longer allow them to fundraise there now."²⁶⁵

The raid also frightened off some of LIFE's employees and affected its ability to hire new staff. Akeel explained, "LIFE employees were quitting because they got scared, leaving a skeleton staff. LIFE was a shell of itself."²⁶⁶ A former employee of LIFE told the ACLU that LIFE encountered difficulty in recruiting new employees and some members of the charity's board of directors wished to withdraw from their positions due to the fear caused by the raid.²⁶⁷ Another former employee of LIFE told the ACLU, "It was so hard for us to find employees to work there; they don't want to work there because the charity had been targeted. Everybody was scared."²⁶⁸ A former LIFE employee also revealed that LIFE's board

of directors had considered closing down the charity because of the fear the raid created, although the charity ultimately decided to continue operating.²⁶⁹ Akeel told the ACLU, "The government did everything short of blocking LIFE's assets. Imagine: you have no documents, no computers, your employees are scared, the donors are scared, and your banks accounts are closed."²⁷⁰

The raid has left a lingering cloud of suspicion over the organization, even though the Treasury Department and law enforcement have taken no enforcement actions against LIFE. According to Akeel, "The raid frightened the community...of course this affected LIFE and its reputation.... LIFE continues to operate, but there is this cloud that hovers over the organization. The raid created a climate of fear, like they are under suspicion."²⁷¹ The national legal advisor of the American-Arab Anti-Discrimination Committee (ADC) told the ACLU, "We don't need raids—don't come with JTTF and the media. Just look at LIFE: they were one of the largest providers of aid in the Middle East, and because of the raid they had to lay off staff members and nearly had to close down operations. All of a sudden they are tainted. That cloud is over them—donors say, 'I don't want to give to them, I'll give to another charity that hasn't been raided.'"²⁷² Despite the negative impact on the charity, LIFE continues to deliver about \$15 million in humanitarian aid annually worldwide.

The ACLU documented similar disruptive consequences in the cases of other charities that have been publicly declared under suspicion or raided. The executive director of a Muslim charity said of the effect of a public raid on the charity, "I cannot deny the impact was significant. Instead of going to 100 mosques in America for fundraising, that was reduced to 30 to 40 events."²⁷³ The executive director of another Muslim charity, who asked that the ACLU not name his charity, said that since two government raids on the charity,

The government has been silent—no indictments came, flat-out nothing happened. I would love for the government to say our charity is cleared of wrongdoing. Seeing how they never charged us with anything, there’s nothing to clear us of. To us, not putting us on a list is clearing us, but there is a perception in the community that our charity has always had the raid hanging over its head. The community is fearful of everything. It saddens me to say, when the FBI investigates and conducts a raid and it’s on the news, in the community’s mind that’s it, we’ve been tried and convicted.²⁷⁴

The regional director of the ADC of Michigan, Imad Hamad, said, “What sinks in, in people’s minds, is the experience they are witnessing. So even if in three years a court finds the charity innocent, by that time the charity is done, placed on a slow-death machine because the charity’s image and reputation are assassinated.”²⁷⁵

The government’s refusal to reassure donors that donations made in good faith to charities that have been raided but not closed (as detailed in section VI of this report) compounds the chilling effect on would-be donors to these charities. According to Imad Hamad, “Life for Relief and Development was raided and has been under investigation for two years. It is still functioning, and when we ask the government if it is legal and safe to give to LIFE, they say ‘it is up to you, ask your attorney.’ Who is going to tell us the law: the attorney or the government?”²⁷⁶ One donor explained,

I personally haven’t donated to LIFE because they were raided, though I did donate in the past. It does affect me as a donor when a charity is raided, because of the appearance: the government raided the charity and it seems unsafe to donate. Number one, there are other organizations that aren’t under this cloud, so I think it is safer [to donate to these other charities]. My understanding is there is something

that changed in the law, that the government can come back and hold the donor responsible [for his donations], so I am being vigilant.²⁷⁷

Another donor similarly stopped donating to any charities that have been raided: “I have not donated to LIFE and the other charities that have been raided, since these reports of raids have come out, because I cannot say for sure that they are not being investigated. If I will be dragged into the picture, why should I be involved with it?”²⁷⁸

Directors of Muslim charities and Muslim community leaders emphasized in interviews with the ACLU that there are alternatives to public raids of charities that achieve the same goals as the raids, without the damaging “shock and awe” of the public raids.²⁷⁹ Akeel argued that instead of conducting a public raid, “there were alternative actions [the government] could have adopted. They could have knocked on the door and worked with the charity to resolve concerns.”²⁸⁰ A Muslim community leader in Michigan similarly told the ACLU, “Instead of these public raids, they can work with charities. There is a better way than having the counterterrorism Task Force raid the charity with guns drawn, and with the media ‘happening’ to show up.”²⁸¹

VI.

Intimidation of Muslim Donors by Law Enforcement

Federal law enforcement is engaging in practices that intimidate Muslim donors and create a climate of fear that chills American Muslims' free and full exercise of their religion through charitable giving. Many donors reported to the ACLU that the FBI has targeted major donors to Muslim charities for interviews about their charitable donations and knowledge of Muslim charities' activities locally and nationally. Furthermore, donors have been subpoenaed to testify in more than one charity-related grand jury investigation, further contributing to the community's fear.

In addition, numerous Muslim community leaders and Muslim donors told the ACLU that federal and local law enforcement and Treasury Department officials' refusal to reassure donors that they will not retroactively be held liable for donations compounds donors' fear of making charitable donations. Moreover, many interviewees reported that they believe that federal and local law enforcement has approached community members about serving as informants in their mosques to monitor donations there. Several interviewees confirmed they had been approached in this manner, and while it is impossible for the ACLU to assess the extent of this practice, community members' perception that this is happening on a large scale contributes to the climate of fear that chills Muslims' charitable giving.

a. Law Enforcement Interviews of Muslim Donors

You are asking why I give this money, but this charity is licensed and I ask, why not?

—Farid N., Dearborn, Michigan²⁸²

The ACLU received reports of FBI interviews of donors to both currently operating and now-defunct Muslim charities, including Life for Relief and Development (LIFE), Holy Land Foundation for Relief and Development (HLF), Islamic American Relief Association-USA (IARA), Global Relief Foundation, Benevolence International Foundation, and Help the Needy. The ACLU has documented reports of law enforcement targeting of Muslim donors in Texas, Michigan, New York, Virginia, Florida, Louisiana, California, Minnesota, Missouri, and Wisconsin for "voluntary" interviews. In these interviews, FBI agents asked donors about donations made to these charities before the government took any disruptive action against them. Muslim donors described these interviews as coercive, intrusive, and intimidating; many characterized the interviews as harassment.

While the ACLU is unable to estimate the extent of FBI interviews of Muslim donors about their charitable donations, the cases we have documented raise cause for concern about the suspicionless profiling of Muslim donors and the corresponding chilling effect the FBI's actions have on Muslim donors.

One fear Muslim donors expressed to the ACLU is that federal and local law enforcement have obtained donor lists to Muslim charities and are using these donor lists to target Muslim donors for FBI interviews. The U.S. Senate Committee on Finance conducted a high-profile investigation of terrorism financing that concluded in November 2005. As part of the inquiry, which lasted nearly two years, the Committee reviewed financial records given to the Internal Revenue Service (IRS),

including donor lists of two dozen Muslim charities.²⁸³ In addition, LIFE attorney Shereef Akeel told the ACLU that federal agents took the charity's donor lists during or following a raid of its offices.²⁸⁴ LIFE, which remains legally operating and has never been charged with any crimes, was not a part of the U.S. Senate Finance Committee investigation.

“Federal agents came to all seven or eight donors at about the same time. They came two years in a row, on the eve of Ramadan. They had two agents at each donor’s medical office and two agents visiting each donor’s wife at their house at the same time.”

The ACLU received reports of FBI interviews of at least 60 Muslim donors in 2005 and 2006 in the Flint, Michigan, area alone. According to a lawyer who represented Muslim donors interviewed by the FBI about their donations, FBI agents interviewed about 60 Muslim donors in the Flint, Michigan, area about their charitable donations in what appeared to be a coordinated initiative.²⁸⁵ According to the lawyer, who represented seven or eight Muslim donors interviewed as part of that group, “Federal agents came to all seven or eight donors at about the same time. They came two years in a row, on the eve of Ramadan. They had two agents at each donor’s medical office and two agents visiting each donor’s wife at their house at the same time.”²⁸⁶ The lawyer added, “These seven or eight donors were all of Arab Muslim background, and the one distinction with these guys is that they are very religious and they take their Zakat very seriously.”²⁸⁷ According to the donors’ attorney, FBI agents asked the donors about their charitable donations to IARA and other Muslim charities, and

asked questions such as “‘Is this your check?’ ‘Why did you give it?’ ‘What was the pretense?’”²⁸⁸ The questions covered donation checks written as long ago as 1995.

The ACLU received additional reports that in 2005, federal agents questioned Muslim donors in Michigan who had made sizeable donations to LIFE, Islamic Relief, and Mercy USA, all legally operating Muslim charities.²⁸⁹

The *Los Angeles Times* reported in April 2009 that Muslim donors in California have also complained of FBI interrogations about their donations.²⁹⁰ At one Los Angeles-area mosque, FBI agents interrogated nearly every donor about their charitable contributions, asking why they were donating and who was receiving their money. According to a Muslim community leader in Anaheim, the mosque subsequently experienced a steep decline in donations.²⁹¹ The *Wall Street Journal* reported in July 2006 about an FBI interview of an American Muslim in Sacramento, California, regarding his charitable donations to Muslim charities and his mosque, as part of a nationwide FBI effort to interview donors to Muslim charities.²⁹²

The executive director of a Muslim charity reported to the ACLU that donors complained of a “harassment campaign” in which the FBI had approached them and asked why they were giving to the charity.²⁹³ According to the charity’s director, at least 30 Muslim donors to the charity reported to him that the FBI had approached them at their workplaces and homes for “voluntary” interviews in 2007 about their charitable donations.²⁹⁴ These donors were located in Michigan, California, Florida, and Wisconsin, and included about 10 Muslim donors in Ann Arbor, Michigan, alone.²⁹⁵ The charity’s director concluded, “The government is changing their strategy—instead of closing down the charity, they say ‘okay, you can keep functioning,’ but in the meantime they harass the donors. They want us to be crippled and die out after a while.”²⁹⁶

The ACLU also received reports that many HLF donors in Texas and elsewhere were questioned by law enforcement about their donations, but the ACLU has not been able to determine the number of donors interviewed nor the precise time period when these interviews occurred.²⁹⁷ One Texan donor told the ACLU, “Some people who have donated large amounts of money, people who gave with credit cards or checks bearing their name, have been investigated by the FBI. They have been questioned, and in some cases threatened with having their passports confiscated or denied.”²⁹⁸ According to the executive director of a Muslim charity in Texas, “Our donors are concerned because all the HLF donors are being harassed when they come back into the country, and some of the big donors to HLF were harassed by the FBI.”²⁹⁹

In Missouri, after IARA was raided in 2004, the FBI contacted many of the charity’s donors, using donor lists confiscated during a raid on the charity’s offices.³⁰⁰

In February 2003, as part of the federal investigation into the New York-based and now-defunct Help the Needy, law enforcement agents questioned 150 Muslim families in Syracuse, New York, who had donated to the Muslim charity.³⁰¹ According to reports received by the New York Civil Liberties Union and local media, law enforcement agents asked donors about their charitable donations, religious beliefs and practices, and their attendance at religious worship services, creating fear among the Muslim community.³⁰² The interviews occurred on February 26, 2003, the same day of the arrest of Help the Needy founder Rafil Dhafir and three other Muslim men on charges of violating the U.S. sanctions against Iraq.³⁰³ In a ruling in a case challenging expanded surveillance provisions of the USA PATRIOT Act, a federal court described how one Help the Needy donor, Magda Bayoumi, was interviewed by two FBI agents at her home because of her donations to the charity.³⁰⁴

A Muslim community attorney in Michigan who has provided legal advice to Muslim donors told the ACLU that the FBI practice of interviewing Muslim donors has a direct chilling effect on Muslim donors’ ability to give Zakat. He explained, “The FBI go to donors’ work and ask ‘why do you give money to this charity, what do you know about this charity, how much do you give?’ Donors get the idea that giving this money is giving him a headache; the government makes the donor feel like he has done something wrong, like he shouldn’t donate, and so the government is discouraging people from giving Zakat.”³⁰⁵ He added, “I have people asking me all the time, ‘Should I donate, will I get in any trouble if I donate?’ I tell people they should give, but that doesn’t mean the government isn’t going to knock on your door and ask you about your donations.”³⁰⁶ According to another Michigan-based attorney who has received requests for legal advice from Muslim donors about their charitable giving, “There is a cast of suspicion on some donors. Donors would call me and say, ‘Hey, I got a call from the government,’ and ask ‘Can I continue to donate?’”³⁰⁷

According to a lawyer who represented Muslim donors interviewed by the FBI two years consecutively, “It was very obvious to me the second time [the FBI] came [to my clients] it was to say, ‘If you keep giving, we’ll keep coming back at you.’ I thought it was a move to intimidate, and every one of my clients felt that way.... Everyone had the same conclusion, which was this was an investigation to make sure people are intimidated and scared, to cut off funding to Muslim children abroad.”³⁰⁸ According to the lawyer, “Everybody became aware that my clients were targeted, and it caused a lot of alarm. It had a lot of people taking the attitude that we don’t want to take on any trouble, so we won’t donate, or they started donating exclusively in the United States.”³⁰⁹

A former employee of LIFE told us, “The FBI went to some donors and asked them those ‘innocent’ questions, like ‘Did you give to LIFE?’ and ‘How much did you give?’ They just want to intimidate

donors. The message is no one should give to LIFE, we are watching them and we are watching you. So donors are intimidated.”³¹⁰

One donor whose father was questioned by FBI about his donations told the ACLU:

Our whole community was approached by the FBI about our donations. They’ve intimidated our whole community. The FBI said that for every donation over \$50,000 they wanted to talk to the donors. Our community is primarily Syrian physicians and there’s a certain percentage you have to give [as Zakat], so it is in large amounts. In our community, I would say about 40 or 50 physicians were approached by the FBI. They were investigating donations to LIFE, HLF, IARA, Islamic Relief, and I think Care [International] too. They’ve been asking about every single Muslim charity. Everyone is aware of this. People aren’t giving as much as they should be giving, because of this. I’m sure the amount our community is giving has gone down a lot.³¹¹

A donor in Texas told the ACLU that his fear to donate “is because they have hit and gone after the major donors to those charity organizations like HLF and others. It has been the policy of the government to go fishing after the big donors. For donations of \$5,000 the FBI comes knocking on their door.”³¹²

According to the regional director of the American-Arab Anti-Discrimination Committee (ADC) of Michigan, “Most of the donors who were approached by the FBI were donors who donate big amounts, or to multiple charities. The FBI knows that if they go to a prominent donor, a doctor, to his clinic or house, the effect is that donor is shaken, and it has a chilling effect. It is all about the message. The FBI usually approaches donors at their place of employment, and you can imagine the effect.”³¹³ He added, “Many donors were visited and questioned

about their donations, so lots of people saw that because of their donations people ended up on a list and it caused them to be scared.”³¹⁴

In addition to FBI interviews of donors at their workplaces and homes, the ACLU received reports of subpoenas of donors to Muslim charities to testify in grand juries, further contributing to the climate of fear among Muslim donors.³¹⁵ At least one donor

“Our whole community was approached by the FBI about our donations. They’ve intimidated our whole community. They’ve been asking about every single Muslim charity. Everyone is aware of this. People aren’t giving as much as they should be giving, because of this.”

to LIFE was subpoenaed for a 2007-2008 grand jury proceeding in Michigan, and a question reportedly raised during the grand jury proceeding was the identity of the charity’s major donors.³¹⁶ Muslim donors also were subpoenaed to testify in a grand jury in Missouri apparently focused on IARA.³¹⁷ The ACLU also received reports that a donor in Louisiana was subpoenaed for a grand jury because of a donation she gave to HLF during the last days of Ramadan.

Furthermore, the ACLU received reports from U.S. citizen and lawful permanent resident Muslims about intrusive questioning by Customs and Border Patrol agents about their charitable donations upon return home after overseas travel. One donor told the ACLU,

I was a donor to HLF, LIFE, Islamic Relief. All of them were active and came to my mosque, and I donated.... Since 2001, each time I travel

overseas, about two to three times a year, when I come back to the U.S.A. I am stopped, pulled from the plane, and asked questions for two to three hours by Customs and Border Patrol agents. Ninety percent of the questions are about money; donations are a big part of the questions. They ask, "What organizations come to the Islamic Center [mosque] for donations, who do you give donations to?"³¹⁸

Dawud Walid, the Executive Director of the Michigan office of the Council on American Islamic Relations (CAIR), a Muslim advocacy organization, told us, "I know of a couple of cases of donors to our organization being asked about donations to CAIR."³¹⁹ Walid added, in one case, "A Pakistani gentleman gave not a large donation, a \$2,000 donation, and when he came back into the country he was detained by Customs and asked about his donation; they asked him if he knew what kind of organization CAIR is. That donor has not given us a single donation since then."³²⁰

In an April 2009 report, advocacy group Muslim Advocates documented U.S. Department of Homeland Security Customs and Border Protection agents' pervasive practice of questioning Muslim travelers returning home after overseas travel, including detailed questioning focusing on charitable giving.³²¹ Muslim travelers reported to Muslim Advocates that Customs and Border Patrol agents asked detailed questions about their charitable contributions, the charities they support, where the Muslim charities they support obtain funding, and their activities on behalf of lawful U.S.-based charitable organizations.

b. Arrests, Prosecutions, and Public Smearing of Muslim Donors

ACLU research reveals awareness among American Muslims that some Muslim donors have been arrested, prosecuted, or suffered public allegations of supporting terrorism because of their donations to legally operating Muslim charities in the United States. While the arrests and indictments in some of these cases were not officially related to the donors' charitable contributions, press reports on these cases and public allegations linking suspects to the Muslim charities they gave to has fueled speculation among American Muslims that arrests, investigations, and prosecutions of prominent donors to Muslim charities were prompted by their donations. Muslim Americans pointed to these cases as evidence that Muslim donors are being targeted for enforcement on account of their charitable giving. Interviewees also pointed to cases of public smearing of Muslim donors for their charitable donations as further evidence that Muslim donors are suffering damaging and public allegations on account of their charitable giving to legal Muslim charities. These well-publicized cases are compounding American Muslims' anxiety about making charitable contributions in accordance with their faith.

In one well-publicized case, wealthy Palestinian-American entrepreneur Jesse Maali was arrested in Orlando, Florida, in a November 2002 raid covered by local press who reportedly were tipped off by federal agents.³²² According to the *Washington Post*, Maali's donations to Muslim charities "attracted the attention of federal prosecutors, who said that Maali had links to Middle Eastern groups that advocate violence because he gave tens of thousands of dollars to those organizations."³²³ Maali was charged with employing undocumented workers at stores he owned and money laundering for creating a scheme to pay undocumented workers off the books. Although Maali was never charged with material support for terrorism, a central issue in his case was donations he had made to Muslim

charities, including the Holy Land Foundation for Relief and Development (HLF) and Benevolence International Foundation (BIF) between the mid-1990s and 2000, before these charities were designated and shut down.³²⁴ In requesting that Maali be denied bail, an Assistant U.S. Attorney claimed that he had financial ties to groups that “advocate violence” in the Middle East.³²⁵ At the bond hearing, FBI agent Stephen Tomas described BIF as the “financial arm of Al Qaeda,” although Maali’s link to the charity dated back to 2000, two years before the Treasury Department designated the charity.³²⁶

Although the charges against Maali had nothing to do with terrorism, local press dramatically labeled the case against Maali a terrorism case, and a local television station ran Maali’s photograph next to an image of Osama bin Laden.³²⁷ U.S. Magistrate David A. Baker, the magistrate judge presiding over the bond hearing at a federal court in Orlando, warned, “There is a great danger that connections and associations can be used to paint with a very broad brush. Simply because someone meets or knows someone...or shares the same characteristics does not make him responsible for somebody else’s actions.”³²⁸ Prosecutors later added tax-evasion charges against Maali after the bond hearing, but no terrorism-related charges materialized.

Maali told the *Orlando Business Journal* in 2003 that the criminal charges and terrorism-related accusations against him had devastated his businesses.³²⁹ Maali died of lung cancer in January 2005, before going to trial.³³⁰ Maali’s trial was delayed because of his worsening health, and a local paper reported that Maali “died under a cloud of suspicion from the federal government.”³³¹

In another well-known case, Mohamed Shorbagi, a Palestinian-American and former Imam of a mosque in Rome, Georgia, was charged in August 2006 with material support for terrorism on account of donations he made to HLF.³³² At issue in the case were donations Shorbagi made from 1997 until HLF was shut down in 2001, a period of time when

HLF was legally operating and not known to donors to be under suspicion.³³³ U.S. Attorney David Nahmias stated via press release that the case showed that “people who illegally support foreign terrorist organizations may be found anywhere in the United States, even in quiet and pleasant places like Rome, Georgia.”³³⁴ Local FBI agent Gregory Jones told the press, “It is very disturbing to see people in the United States who are so willing to offer their assistance to known terrorist organizations.”³³⁵

In August 2006 Shorbagi pled guilty, in the U.S. District Court for the Northern District of Georgia, to providing material support for a foreign terrorist organization (Hamas) through donations he made to the HLF between 1997 and 2001, and agreed to serve a maximum prison term of 15 years.³³⁶ According to U.S. Justice Department officials, his sentence was commuted to seven years and eight months “because of the substantial co-operation he has provided in other terrorism-related cases.”³³⁷ Shorbagi also agreed to pay full restitution to the victims of fraud crimes that the government agreed not to charge in exchange for his cooperation.³³⁸ According to press reports, Shorbagi could have received up to life in prison if he had not cooperated with the FBI and federal prosecutors.³³⁹

Shorbagi, who had volunteered as a fundraiser for HLF, testified as a witness for the prosecution against HLF during the retrial, in exchange for the reduction of his prison sentence.³⁴⁰ Shorbagi also testified in the racketeering conspiracy trial of Abdelhaleem Ashqar and Muhammad Salah in the U.S. District Court for the Northern District of Illinois.³⁴¹ (In February 2007, Salah and Ashqar were convicted on obstruction and contempt charges but acquitted of racketeering conspiracy charges.)

In other cases in which prominent donors to Muslim charities have been arrested, many American Muslims perceived a connection to their donations, although it is unclear whether the donors’ legal problems were related to their donations. In

one such case in Hillsboro, Oregon, software engineer Maher Hawash was arrested and detained as a material witness in March 2003.³⁴² According to the *New York Times* and local press, some speculated that Hawash was arrested because of over \$10,000 in donations he made in 2001 to Global Relief Foundation, when the charity was still legally operating.³⁴³ After five weeks in detention, prosecutors ultimately charged Hawash with crimes unrelated to his donations, and Hawash pled guilty to one conspiracy charge against him. Prosecutors agreed to drop charges of conspiring to levy war against the United States and conspiring to provide material support for terrorism, in exchange for testimony against six Muslims in Portland charged with terrorism.

Also contributing to American Muslims' apprehension about charitable giving is the media storm that has surrounded high-profile Muslim donors. In these cases press reports have publicly smeared Muslim donors by linking them to terrorism via their charitable donations. Retired NBA basketball star Hakeem Olajuwon famously became the subject of negative media attention because a mosque he founded and funded had given more than \$80,000 in donations to the Islamic American Relief Agency-USA (IARA), a Muslim charity the Department of Treasury subsequently designated and shut down. Olajuwon's tenuous association with IARA became international news, as press articles linked him to terrorism despite Olajuwon's public statements that he had believed IARA to be a legitimate charity dedicated to helping the needy in Africa.³⁴⁴ "It took my whole career to build my name and the causes that I choose to support," Olajuwon told the *New York Times*.³⁴⁵ "It took my whole career, and it's difficult to accept when my name is coming linked into anything such as terrorism."³⁴⁶

c. Surveillance of Donations at Mosques

The ACLU documented a widespread belief among Muslim community members in Texas and Michigan that the FBI and police have used and continue to use informants in mosques to monitor worshippers' charitable donations and other constitutionally protected religious activity and speech. While the accuracy of this perception is impossible for the ACLU to determine, some reports confirm that law enforcement have used informants in mosques.³⁴⁷

For example, one New York Police Department informant attended 575 prayer services in New York mosques as an informant, sometimes four or five a day; wrote down the license plate numbers of worshippers at a mosque; and "reported on the tone of religious services and internal debates."³⁴⁸ In Orange County, California, reports surfaced in March 2009 that the FBI had sent a convicted criminal into mosques as a confidential informant to record conversations from July 2006 to October 2007.³⁴⁹ After the revelations about FBI use of the informant in Orange County mosques, a coalition of Muslim community groups in Michigan came forward to ask U.S. Attorney General Eric Holder to investigate reports that FBI agents had approached congregants at Michigan mosques to monitor charitable donations made at the mosques and the people coming to the mosques.³⁵⁰ In another case, the Executive Director of the Michigan office of the Council on American Islamic Relations (CAIR) reported to the ACLU that a Yemeni man recently complained to CAIR that the FBI had approached him and "asked what charities were coming into the mosque and who raised their hand when asked for money."³⁵¹ In addition, according to one news report, in 2008 the FBI launched an operation to recruit and place informants in mosques.³⁵²

In interviews with the ACLU, several individuals reported FBI attempts to recruit them as informants in their mosques, to monitor charitable donations and speech at their mosques. Many other



Worshippers pray at Masjid As-Salam mosque in Memphis, Tennessee, during the Muslim holy month of Ramadan. Masjid As-Salam boasts as many as 30 different nationalities among members of its congregation. (Brandon Dill/Memphis Commercial Appeal)

individuals reported knowing of other Muslims who had been approached as potential informants but were too fearful to talk publicly about the experience. One Muslim man in Michigan told the ACLU, “Two FBI came to my house...they offered me a deal—they say that I can work with them and they will help me to get citizenship. They ask me who at the mosque has extremist ideology. They keep trying; they say ‘We will come back to you again, to ask you again to work with us.’ They said ‘We know about your problem,’ because I have waited three years since I applied for citizenship, and it wasn’t given to me. They said ‘We know about this, and we can work on it, give you whatever you want.’”³⁵³

The infiltration of mosques to investigate people not suspected of wrongdoing, and the use of paid confidential informants to infiltrate places of worship the FBI does not have any reason to suspect of breaking the law, raises serious concerns about religious and ethnic profiling. While informants have long served a key role in law enforcement investigations, the use of informers at places of worship without suspicion of criminal activity is troubling. Law enforcement agencies should limit use of informants at places of worship to instances where there are grounds for suspecting criminal activity.

The ACLU found that the perceived use of informants to infiltrate mosques has had a chilling effect on congregants' rights to association, speech, and religion. Some reported limiting their attendance at congregational prayer in mosques and limiting their charitable giving, for fear that an informant was reporting their presence at the mosque or their individual donations made during charitable fundraisers at the mosque.³⁵⁴

In particular, some American Muslims reported to the ACLU that their perception that paid informants are monitoring charitable donations at the mosque has a clear chilling effect on their charitable giving, as much fundraising for Muslim charities and humanitarian aid takes place in mosques. For instance, a Muslim woman who has completely stopped attending fundraising functions at her mosque in Michigan told the ACLU,

Some people are afraid to go to the mosques, and people are afraid to give donations. There are a lot of snitches around here; the government is asking people to snitch on others' donations.... I know a lot of my clients, when they have problems with immigration, the government says 'work with us,' and they agree and they go to the mosque for the government and watch while they pray. They are like snitches. That's the fear, that people like that are watching your donations. Can you imagine what is happening at the mosque? That's fear.... People always tell you that there are people watching in the mosque.³⁵⁵

A Muslim woman in Texas told the ACLU that two FBI agents worship at her mosque and have approached her husband about serving as an informant. She told us that the presence of FBI agents at her mosque has led her to stop worshipping there and to drastically limit her attendance at events at the mosque. She explained, "Two card-carrying FBI agents pray at our mosque and have approached my husband at our mosque. They pray at our mosque—you can imagine what this does

[clamps hand over mouth]. It is a feeling of uneasiness—we don't understand what they're here for, what they're trying to prove. They tell us they're here to build bridges. After getting slapped in the face, who is going to believe in a bridge?"³⁵⁶ According to her, "Because of the government's intimidation...[m]ore people like us are choosing to pray at home instead of getting out and praying in the congregation. There is a lot of suspicion and fear. We have moved away from being in the mosque as much."³⁵⁷

The ACLU is concerned that a recent major expansion of FBI investigative powers in the final days of the Bush administration allows racial profiling to further creep into law enforcement and permits suspicionless spying on individuals' religious activities at their places of worship. New FBI guidelines released by the Bush administration in October 2008 and effective December 1, 2008 replaced existing bureau guidelines for five types of investigations. The new guidelines reduced standards for beginning "assessments" (precursors to investigations), conducting surveillance, and gathering evidence, meaning the threshold to beginning investigations across the board was lowered. Under the revised guidelines, FBI agents no longer need "factual predication" to use paid informers, spy on a person's activities, or engage in other types of intrusive surveillance; all that will be necessary is a hypothetical "threat." More troubling still, the guidelines allow a person's race, religion, or ethnic background to be used as a factor in opening an investigation, opening the door for use of racial profiling as a matter of policy.

As amended, the Attorney General's Guidelines on General Crimes, Racketeering Enterprise allow "assessments" of non-criminal activity, which may include collecting information about people not suspected of misconduct to create profiles on individuals and groups. Even in the absence of any particularized indication of criminality or risk to national security, FBI agents conducting an "assessment" are now authorized to misrepresent

their identities to gather information, to task undercover informants to attend meetings, events, and even worship services, and to engage indefinitely in surveillance of homes, businesses, and individuals. The new guidelines, put into place last December, allow surveillance suspiciously similar to the FBI's previous domestic spying program known as COINTELPRO, which was used throughout the 1950s and 60s to monitor and disrupt groups suspected of having "communist" ties, which included university professors, labor groups and civil rights advocates including the late Dr. Martin Luther King, Jr.

"Some people are afraid to go to the mosques, and people are afraid to give donations. There are a lot of snitches around here; the government is asking people to snitch on others' donations."

Under previous FBI guidelines, law enforcement already was permitted to check leads and conduct preliminary inquiries with the thinnest of predication. In testimony before the U.S. House of Representatives on September 16, 2008, FBI Director Robert Mueller insinuated that the FBI interpreted its authorities under the previous guidelines to allow the use of intrusive investigative techniques even without any factual "predication," in violation of the plain language contained in the previous guidelines. The ACLU has called for the Department of Justice Office of the Inspector General (OIG) to investigate whether the FBI violated the previous guidelines, examining in particular the manner in which the FBI used race, religion, national origin, or First Amendment protected activities in determining whether to initiate, expand, or continue an investigation.

d. Government Refusal to Reassure Donors

In interviews with the ACLU, numerous Muslim community leaders and donors complained of the U.S. government's refusal to reassure donors that they will not retroactively be held liable for donations. In numerous meetings with federal and local law enforcement and Treasury Department officials, Muslim community leaders and members have requested assurance that donors will not be criminally charged for donations made in good faith to legally operating Muslim charities. According to Muslim community leaders present at these meetings and donors who have sought clarification on this issue, law enforcement and Treasury Department officials have refused to provide such assurance. One donor in Texas explained, "The FBI we met with in Irving wouldn't assure us that we wouldn't be punished retroactively if we didn't know the charity was doing wrong. We were seeking reassurance from the FBI that we would not be targeted if years down the line a charity is closed, but the FBI would not provide that reassurance."³⁵⁸ An Imam in Michigan told the ACLU that he has asked the local FBI to reassure Muslim donors through the media that they will not be retroactively targeted for past donations, but the FBI has refused thus far.³⁵⁹

For three years the regional director of the American-Arab Anti-Discrimination Committee (ADC) of Michigan, Imad Hamad, has helped to organize three Michigan public forums with OFAC about Treasury Department regulations and Muslims' charitable giving. Hamad says, "Even after years of engagement with the Treasury Department, even I as an active organizer don't have a clear answer from OFAC about what are the regulations we as donors should go by. All of us among the [Muslim] community leadership were simply asking of the Treasury Department representatives, give us clear guidelines for donors, but we cannot get a clear answer.... In meetings the government leaves the door open to take action against the donor. They

will not give me assurances that if I am a donor I will be safe and will not be questioned or prosecuted.”³⁶⁰ According to Hamad, “What is legal today could be illegal in seconds. When people ask the Treasury Department, ‘I want to obey and respect the law, but how can I know as a donor that my donations are safe and legal?’ the government’s answer is: ‘you do your homework as a donor.’ They put the burden on the donor. The donor has to know everything about the charity, its board, its programs, where its money goes.... If the charity is legal then why isn’t the donation legal?”³⁶¹

National and local Muslim leaders told the ACLU they receive numerous queries from Muslim donors about their liability for charitable donations, but federal law enforcement and Treasury Department officials refuse to provide guidance to community leaders on how to respond to these queries. The national legal advisor of the ADC estimated that during Ramadan, their office receives about 100-150 queries from Muslim donors each month from across the country, asking whether it is safe to make charitable donations.³⁶² And yet at national roundtables with the Department of Treasury and Muslim community leaders held in Washington, DC, Treasury Department officials have similarly refused to provide reassurance for donors. The ADC’s national legal advisor told the ACLU of these roundtables, “We can have a six-hour discussion [with Treasury] and five hours of it will be about one question: if I give in good faith, with the intention to give to charity, and Treasury comes down on the charity later, will I be in trouble? They will never give us a straightforward answer.”³⁶³

Donors repeatedly expressed frustration that the Department of Treasury and federal law enforcement did not provide them with requested guidance on how to avoid violating the material support laws when making charitable donations. One Muslim donor in Texas asked, “Is it really my obligation as a U.S. citizen to decide that a charitable organization is legal [to donate to]? It is my responsibility that after the U.S. government blacklists

an organization, then I don’t donate to them. But before that point it should be the government’s responsibility to evaluate the organizations. If the government gives the organization 501(c)(3) status, then I should be able to donate to that organization. If I acted on all the available information at that time I made the donation, then you can’t blame me for what happens in the future. I gave to HLF, and then one year later it is shut down. Then you say that I am responsible for giving to an organization that was legal at the time?”³⁶⁴

“What is legal today could be illegal in seconds. When people ask the Treasury Department, ‘I want to obey and respect the law, but how can I know as a donor that my donations are safe and legal?’ the government’s answer is: ‘you do your homework as a donor.’ If the charity is legal then why isn’t the donation legal?”

A Muslim donor in Michigan expressed similar frustration, noting, “We had a meeting once with officials from the U.S. government who came from Washington to Dearborn, to meet with the Muslim community. They were saying it was our responsibility, the people who are donating, to know that the money we donate is going to the projects the organization says it is going to. They say we have to do due diligence, but we said that if that organization has a license how are we to know [it is funding terrorism]? They say that it is our responsibility, but I can’t imagine how one person can do that. In that meeting, the government said we can be held responsible for our donations—the donors are responsible.... We need the government to assure people that they can donate.”³⁶⁵ Another donor told the ACLU, “After 9/11, when we heard about HLF and Benevolence International, it caused a lot of

fear to the point where I called the FBI and I asked them if I am a contributor to an organization that is later declared a terrorist organization, then can I be held responsible for my donations? I asked, can I be given a list of organizations that are safe to give to? They said you have to do the research yourself, it's your responsibility."³⁶⁶

"You can't put up a blinking light at an intersection and tell me it is your call as a driver whether to stop or not, and then if I go through the light you ticket me. It is like a blinking yellow light over the charity, and it is up to you whether to make your move, and it is up to the police officer to decide whether to ticket you or not. So who defines the law?"

Lack of clarity on the rules regarding charitable donations and donor liability for donations made in good faith creates confusion among donors who want to comply with the law. As Imad Hamad told the ACLU, "You can't put up a blinking light at an intersection and tell me it is your call as a driver whether to stop or not, and then if I go through the light you ticket me. It is like a blinking yellow light over the charity, and it is up to you whether to make your move, and it is up to the police officer to decide whether to ticket you or not. So who defines the law?"³⁶⁷ Donors' fears of being subject to enforcement of the criminal material support laws are not unreasonable, given prosecutors' use of the material support statutes to prosecute minor offenses (detailed in section III of this report, "Expansion of Prohibited Material Support").³⁶⁸

A former Treasury Department official, who served under the administration of President George W. Bush and asked not to be named, told the ACLU,

"The U.S. government doesn't tell the Muslim world, explain to the public, that there is a charity they can't give to because they are under investigation. You could think you are giving to a good charity and six months later it may be designated, but it may be under investigation right now—there is no gray list, no white or clean list." He admitted, "The Office of Terrorist Financing and Financial Crimes (TFFC), one of their jobs is Muslim outreach, and they should try to make it easier for people to give to clean Muslim charities. They haven't helped people to pick the right charities. I haven't seen anybody mount an effort along these lines.... That would help; then Muslims giving would feel reasonably sure that they can give to a charity."³⁶⁹ He added, "I think Treasury needs to be more specific about where it is okay to donate. That would force a change of policy. There need to be some guidelines provided, a sense of what charities are better or cleaner. That goes to TFFC, and I don't think they've done a sufficient job of letting the Muslim world know where it is okay to donate.... I think it all comes down to TFFC doing a better job of reaching out to the Muslim world [in the U.S.]."³⁷⁰

Moreover, while the government remains silent regarding donors' retroactive liability for donations made in good faith, some statements by government officials have indicated to some Muslim donors that they could in fact be investigated or prosecuted for their donations. For instance, on the Friday before the Monday raid of Life for Relief and Development in Michigan, an FBI special agent told local Muslims that any large contributor to a suspect organization might be questioned.³⁷¹ In 2004, a Bush administration Department of Justice attorney told a judge that "a little old lady in Switzerland" could be held as an enemy combatant for giving money to a charity for an Afghan orphanage, if the money was passed to al Qaeda without her knowledge.³⁷² These public statements by law enforcement and Department of Justice officials shape the Muslim donor community's understanding of the unclear message sent by government representatives who conspicuously refuse to reassure donors.

VII.

Charitable Giving *in Islam*

a. Zakat as a Religious Obligation to Tithe

The obligation to give Zakat (charity or alms) is one of the core “five pillars” of Islam, the five duties considered essential for all Muslims (Shahada, profession of faith; Salat, prayer; Zakat, giving of alms; Sawm, fasting during Ramadan; and Hajj, pilgrimage to Mecca). The obligation to give Zakat is seen as a sacred duty for all observant Muslims. It bears some resemblance to the giving of tithes by Christians, although the rules and applications differ in several important ways. While there are disagreements among Islamic jurists about some technical aspects of giving Zakat, the basic rule is that all observant Muslims who have the ability to do so should donate a certain portion of their wealth every year to appropriate recipients.³⁷³ In Islam, Zakat is distinguished from Sadaqah, a discretionary form of charity that is not obligatory.

The ACLU interviewed eight Sunni and Shi’ia Imams who described their understanding of Zakat as religious scholars and as the spiritual leaders of the Muslim community that worships in their mosques. A Sunni Imam in Michigan, Sheikh Mohamad Musa, explained to the ACLU, “Zakat is one of the most important pillars of our faith.... People believe it is one of their duties to poor people, the needy. It is mandatory to give Zakat, it must be done, according to the teaching of Islam. The importance of Zakat in Islam is huge. It is one of the rights of poor people to receive Zakat, and it is obligatory that rich people must give Zakat, it is not optional.”³⁷⁴ Imam Sayid Hassan Al-Qazwini, a Michigan-based Shi’ia Imam, explained, “Zakat in mandatory in our

religion. You have to pay 2.5 percent all the way to 10 percent of your income, or surplus income, depending on your school of Islam. You have to give it.”³⁷⁵ An Imam in Texas, Yaseen Sheikh, told the ACLU, “Zakat is a moral and religious obligation every Muslim person has. And people do this because of their respect and reverence for God.”³⁷⁶ Imam Dr. Yusuf Z. Kavacki, a Texas-based Imam and scholar of Islamic law, said,

Zakat is one of the main pillars of Islam mentioned in the Qu’ran a hundred times over in the imperative form—as in you must do this. This is one of the very, very important, clear-cut characteristics of Islam: go on Hajj, prayer, fasting, declaration of faith to Allah and Mohammed as his messenger, and Zakat are part of the very definition of Islam. These separate Islam from other religions. Zakat is a very important act that needs to be practiced by all Muslims.³⁷⁷

American Muslims assign considerable importance to the fulfillment of Zakat as a religious obligation included in the five pillars of Islam. A 2007 Pew Research Center survey of 60,000 American Muslims found that about three-quarters of Amer-

“Zakat is a moral and religious obligation every Muslim person has. And people do this because of their respect and reverence for God.”

ican Muslims (76 percent) say that giving Zakat is “very important” to them.³⁷⁸ Only a small minority of American Muslims surveyed (8 percent) said that the practice of giving Zakat is “not too” or “not at all important.”³⁷⁹ A 2009 Gallup poll of more than 300,000 adults found that American Muslims are more likely to give to charity than the general



Members of a Muslim congregation in Virginia give Zakat donations for the needy before they enter a mosque for a service to mark the conclusion of the holy month of Ramadan, the height of annual Muslim charitable giving. Zakat is one of the core “five pillars” of Islam and a religious obligation for all observant Muslims. (Alex Wong/Getty Images)

population in America, with seven in 10 American Muslims reporting giving money to a charity in the previous month.³⁸⁰

In interviews with the ACLU, observant American Muslims described the personal significance they ascribed to fulfillment of Zakat as a religious duty. One Bangladeshi-American Muslim explained the importance of Zakat according to his religious beliefs:

The third pillar of Islam is Zakat, the obligation to give to charity. For us in Islam, God ordained that 2.5 percent of what you’ve earned isn’t yours—the poor have a right to that money.... I know that to help those who are suffering

satisfies God. In Islam, the whole objective of a Muslim is to praise God, to recognize what He has done for you and given to you, to give out of the bounties that God has bestowed upon you.... Giving Zakat is such an important piece of Islam—it is a way to cleanse yourself, to purify your earnings, to help others who are another of God’s children and are less fortunate.... It is a declaration of faith. You have five pillars, and those pillars hold up Islam. If you take away a pillar that holds up a foundation, that makes the building weak. Zakat is in the middle of the foundation; it is the middle pillar, the third pillar. Without that your faith is weakened.³⁸¹

The observant American Muslims we interviewed consistently described Zakat as a pillar of Islam, and highlighted its importance in their faith. Observant Muslims interviewed by the ACLU also uniformly described Zakat as a religious obligation, mandatory for all Muslims. A Lebanese-American Muslim explained, “We want to exercise all the freedoms that come under the scope of our religion. We don’t want just to pray. There are five pillars of Islam, and we want to exercise all five pillars. One of these pillars is charity, and if you take away charity, you take away a pillar of our religion.”³⁸² Another man explained, “Zakat is one of the five pillars of Islam. It is like any other pillar, and we believe that to be a good Muslim you have to be a good Muslim all the way: you can’t just pray or fast, you need all the pillars.”³⁸³ An Afghan-American Muslim explained that according to his religious beliefs, “We are obligated to give alms, to give the Zakat money. It is not an option, it is mandatory that all Muslims give 2.5 percent of their wealth.... God almighty says in the Qu’ran that 2.5 percent of your wealth does not belong to you, it belongs to the orphans and the poor and those who are struggling and cannot sustain themselves.”³⁸⁴ Another Muslim highlighted the frequency of verses pertaining to Zakat in the Qu’ran: “Zakat is very serious and often mentioned in Islam, every 10, 15, or 20 verses of the Qur’an. We must give diligently and calculatedly.”³⁸⁵

Some Muslims told the ACLU that they viewed Zakat as a way to purify themselves or their wealth, and others described the money obligated to be given as Zakat as a burden that weighed heavily on them until they gave the money away as charity. One Muslim told the ACLU, “Zakat...is a purification; you have to purify your money by giving away some of it. It is also supposed to wipe out sins, and when you give the money it comes back at you in happy ways.”³⁸⁶

“Giving Zakat is such an important piece of Islam—it is a way to cleanse yourself, to purify your earnings, to help others who are another of God’s children and are less fortunate. It is a declaration of faith.”

The different schools of Islamic theology do not provide a uniform answer to the question whether the religious obligation of giving Zakat has been satisfied if the donor makes a donation to a charitable institution, but the funds are subsequently seized (such as by the U.S. government) before they can be distributed to the intended recipients. The ACLU’s research makes clear, however, that for a sizable number of American Muslims, the government’s seizure of Zakat that they gave means that they have been prevented from fulfilling their religious obligation; government action has thus infringed on their ability to fully and freely exercise their religion. Moreover, such actions have created a chilling effect in the Muslim community, making many fearful of participating in this religious duty in the way that most corresponds to their religious beliefs. Section VIII of this report details the chilling effect on Muslims’ giving of Zakat in accordance with their religious beliefs, as well as the consequences of the government’s continued withholding of seized Zakat money on some Muslim donors’ religious rights.

b. Preferred Recipients of Zakat as Defined in Islam

For the most part, Zakat is traditionally given to the poor, the needy, and the sick (Qur'an 9:60), but in general it also is appropriate to give it for the construction of mosques and other recognized charitable and religious activities. Some Muslims believe that Zakat must be given to other Muslims, though there is not unanimity in this belief. Whether an individual Muslim believes that Zakat should be given only to other Muslims, all Islamic schools of thought have rules on who is and is not a proper recipient.³⁸⁷

The Qur'an specifies eight permitted classes of beneficiaries of Zakat: the poor, the needy or very poor, the people appointed to collect or administer Zakat, the recently or about to be converted, captives, debtors, those completing duties such as teaching in God's cause, and, travelers (Qur'an

Many American Muslims reported that because of the closure, and in some cases prosecution, of Muslim charities that provided humanitarian assistance overseas or funded orphan sponsorship programs overseas, they felt that they could not fulfill their religious obligation to give Zakat to these preferred or mandatory beneficiaries of Zakat.

9:60). In some schools of Islamic interpretation, the categories of the poor or needy include certain sub-groups, including orphans, widows, students, and prisoners and their families.³⁸⁸ Refugees have become an increasingly important category of Zakat recipients for some Muslims, who view refugees as the modern-day equivalent of

two traditional recipients of Zakat, travelers and prisoners.³⁸⁹ The hadith (sayings and deeds of the Prophet) outline these categories in great detail, and Islamic jurisprudence has developed detailed rules regarding proper recipients of Zakat, collection practices, rates of giving, and exemptions. There are differing interpretations among Islamic schools of thought and authorities regarding these categories of recipients of Zakat.³⁹⁰

In interviews with the ACLU, numerous Muslim donors explained their understanding of the categories of preferred or permitted recipients of Zakat. Some Muslims stated that according to their religious belief, they strongly preferred or felt obligated to give Zakat to orphans. According to one donor,

Orphan sponsorship is an absolute obligation for all Muslims. If you were to read the Qu'ran, orphans are mentioned every few pages, every chapter. It says so often 'take care of the orphans,' and there are so many examples and details about how to provide and care for them. There is a verse of the Qu'ran that says he who devours the wealth of an orphan is swallowing fire into his belly. There is another Quranic verse that if you are unable to give money to orphans, then give them a kind word and they are your brothers in faith.³⁹¹

Many American Muslims reported that because of the closure, and in some cases prosecution, of Muslim charities that provided humanitarian assistance overseas or funded orphan sponsorship programs overseas, they felt that they could not fulfill their religious obligation to give Zakat to these preferred or mandatory beneficiaries of Zakat. Section VIII of this report details this impact on American Muslims' ability to fully and freely exercise their religion.

VIII.

Chilling Effect on Muslim Charitable Giving and Impact on Religious Freedom

The ACLU documented a pervasive fear among Muslim charitable donors that they may be arrested, prosecuted for material support for terrorism, interviewed by law enforcement, subpoenaed to testify in a criminal case, subjected to surveillance, deported or denied citizenship or a green card, or otherwise implicated because of charitable donations made in fulfillment of their religious obligation to give Zakat. American Muslims told the ACLU that the government's designation, seizing of assets, and law enforcement raids of Muslim charities; interview of donors to Muslim charities; and criminal prosecution of Muslim charity leaders have chilled their charitable giving and limited their free and full exercise of their religion through charitable giving.

The ACLU does not suggest that the right to give donations in the name of Zakat is absolute, and neither does it maintain that donations made in the name of Zakat should be unrestricted in all cases, regardless of the circumstances. It is the chilling effect on charitable donations made in good faith and intended to be used only for humanitarian purposes that raises constitutional and human rights concerns.

a. Chilling Effect on Charitable Giving (Zakat) Due to Climate of Fear

I feel this is part of my religion, part of my faith: that I have to help through donation, to needy people in Palestine or Bangladesh, people living in war or occupation, people suffering a disaster like an earthquake. Now I can't make donations—it's clear to everybody you can't give to Muslim charities.... Since HLF was closed, now there is no way to give in a way that is clearly legal. We don't know how to give now, and there is no way to give Zakat now.... Right now I am not giving, I have halted my Zakat, and this means I am not complying with my religion. Even international law says I can help people in need according to my religion.

—Jamal Eddine Saih, Plano, Texas³⁹²

The government's designation, seizing of assets, and law enforcement raids of Muslim charities; interview of donors to Muslim charities; and criminal prosecution of Muslim charity leaders have created a chilling effect on American Muslims' charitable giving. In interviews with American Muslim donors, the ACLU documented a pervasive fear among Muslim charitable donors that they may be arrested, prosecuted for material support for terrorism, interviewed by law enforcement, subpoenaed to testify in a criminal case, subjected to surveillance, deported or denied citizenship or a green card, or otherwise implicated because of their charitable donations. Since 2002, media reports have suggested, based on anecdotal evidence, that the designation of Muslim charities has created fear among American Muslim donors and chilled their charitable giving.³⁹³ Other reports have suggested that Muslim charities have experienced a decrease in donations due to the government's closure of some Muslim charities.³⁹⁴ The ACLU's more comprehensive research has confirmed previous anecdotal reports of this chilling effect.



The leader of a charity in Dearborn, Michigan, who says donations have fallen because of the climate of fear. The government's actions have created a general climate in which law-abiding American Muslims fear making charitable donations in accordance with their religious beliefs. (Fabrizio Costantini/ New York Times)

In interviews with the ACLU, many Muslims reported that the climate of fear has made it impossible for them to fulfill their religious obligation to give Zakat in accordance with their personal religious beliefs. For these observant Muslims, the atmosphere of fear created by the government's treatment of Muslim charities and donors has directly impacted their ability to practice their religion. One Bangladeshi-American Muslim told the ACLU, "I am so concerned about giving money to a Muslim organization. It hurts me, because I myself am not able to practice Zakat...and I cannot practice my religion fully."³⁹⁵ A U.S.-born Muslim man told the ACLU, "The implied threat and fear of reprisal regardless if the charity is a legal entity now stops our giving, prevents us from fulfilling our religious

duty.... Limiting Zakat, it is like telling Christians they can't assemble on Sunday. To take away one-fifth of Islam, one of the five pillars of Islam, is to eat away at the religion."³⁹⁶ According to a Pakistani-American Muslim man:

For six years I really have not been able to fulfill Zakat, I couldn't fulfill my religious obligation. HLF was in the news and they painted all the Muslim charities with a very broad brush; for a very long time we haven't known what charity we could trust to give to.... It is an obligation we have as a Muslim: you have to pray, you have to go on Hajj, and you have to give Zakat if you can afford it. This is all part of being a Muslim, and we absolutely have not been able to practice

our religion to the extent we are obligated to do so. This is why the Pilgrims sailed here, for religious freedom. I don't have any religious rights anymore; I ask am I living in America? It is disheartening, disappointing. I feel that I sinned. My intention has been to give, but the circumstances are such that I cannot give.³⁹⁷

A Palestinian-American man described a similar impact on his ability to practice his religion: "I am not able to pay Zakat anymore...I feel like I am doing something wrong by paying Zakat. I am not able to pay Zakat as I am supposed to, because I fear I will get in trouble and be questioned about my giving."³⁹⁸ He added, "It is a big impact. Before, I was giving to any Muslim charities that help the Muslim community, if it was a humanitarian organization. There were a couple of good ones, but the government shut them down and named them terrorist organizations. Now we are scared to give to any. After what we're seeing from the Bush administration, and too many innocent donors being questioned, I just stopped. I'm not giving anymore."³⁹⁹

For some Muslims the ACLU interviewed, their failure to fulfill their obligation to give Zakat brings serious consequences for their religious standing, and many donors spoke poignantly of this personal impact of terrorism financing policies and practices. One Lebanese-American Muslim told the ACLU, "My religious standing is affected because the atmosphere of fear affects me. It depends on the person; not everybody is strong enough. For me, personally, this was a factor that affected me. I wasn't strong enough, so one of the pillars of my religion is not being fulfilled properly, as it should be.... If you are not fulfilling your pillar of Islam, your Zakat, it hurts you."⁴⁰⁰ A Muslim woman told the ACLU, "I am backing out of my religious obligation. In the longer term it has an effect, a cumulative religious effect, because I fear donating to Muslim charities or to the mosque."⁴⁰¹ Another donor explained, "Closing down the charities, you are getting to the spiritual essence of the human being. Every person needs to give to charities as a

religious obligation, to feel good as a person, and the government has closed this off."⁴⁰²

An Egyptian-American explained that being unable to provide assistance to the needy weighs heavily on him: "It really hurts me so bad that there is someone out there that needs help and I have to be a coward and cannot help her because I know the government can fabricate [charges because] I wrote the check. Every day I am thinking about that girl I have not helped and am thinking what a coward I have become.... I don't see any other thing that

"Closing down the charities, you are getting to the spiritual essence of the human being. Every person needs to give to charities as a religious obligation, to feel good as a person, and the government has closed this off."

can be worse than this: if I am supporting a religious child somewhere and the government says I can get in trouble for it, tying my hands to prevent me from doing what is right."⁴⁰³ He added, "It is making me try to be a better Muslim, but it breaks my heart and makes me feel bad that I cannot do what I have to do. It makes me sad and upset—it makes me cry sometimes—that I cannot help."⁴⁰⁴

Other Muslim donors reported that their fear has caused them to substantially decrease their charitable donations, to as little as 10 percent of their previous charitable giving. These donors reported their charitable contributions had decreased even prior to the recent financial crisis, and in these cases donors were clear that the decrease in their donations was directly caused by their fear of the consequences of donating. For instance, one donor explained:

The closing of HLF was a major blow, not only because it was a major charity, but also because of the U.S. government arrest of some well-known brothers in the community. That created an atmosphere of intimidation. So now we are scared to send our donations, things we were proud to be doing to support people overseas. This atmosphere affected me. The amount of my giving has definitely gone down. In the first year after HLF closed I didn't donate any money at all. For years now I have given less money.... I used to mainly pay my annual Zakat to HLF, sometimes in the thousands [of dollars], say \$1,500 at a single HLF fundraiser. After HLF was closed everything stopped. Now I donate 10 percent of what I used to donate, because of the fear factor, the fear that the U.S. government will somehow intimidate me.⁴⁰⁵

Many donors expressed concern that they cannot find a "safe" Muslim charity to which they can donate without fear of reprisal. One former Treasury Department official told the ACLU, "This is the biggest problem that the Muslim American community has: they feel there is nowhere to give to."⁴⁰⁶ A donor explained, "The closing of HLF has had a severe impact on my general giving because you can barely find a place to give charity to without the fear of being questioned or looked into for giving.... Since then we are hardly giving anything... the amount I give is much less, it has gone down a lot.... Overall, the government is creating an atmosphere of fear, of intimidation, creating a collective sense of worry before doing something innocent. As far as giving, I am not free."⁴⁰⁷ In many cases, donors reported that they have ceased donating to any charity that has been raided or publicly reported to be under investigation. Donors repeatedly expressed the perception that the only Muslim charity that remains an option is the U.K.-based Islamic Relief, because of the common perception that the U.S. government will not close the charity due to Prince Charles's outspoken support for it.⁴⁰⁸

Religious leaders confirmed in interviews with the ACLU that they have observed a chilling effect on their congregants' charitable giving, and an impact on congregants' ability to fulfill Zakat. An Imam in Texas explained, "The willingness of the people [in my community] to give dropped to 50 percent or less. People are scared to donate, because the government might target them, investigate their business, put them on the blacklist. Part of their religion is curtailed—they cannot pay Zakat and

"People are scared to donate, because the government might target them, investigate their business, put them on the blacklist. Part of their religion is curtailed—they cannot pay Zakat and support the needy. The goal is to strangulate an important part of our religion. Effectively, practically, it affects our practice of our religion."

support the needy. It is subtle, hidden, and affects consistently over time. The goal is to strangulate an important part of our religion, which is charitable assistance.... Effectively, practically, it affects our practice of our religion."⁴⁰⁹ An Imam in Michigan explained, "We have noticed the effect of [the closure of Muslim charities]. We have noticed a huge decline in the events pertaining to charities, and a significant drop in the amount raised.... Many people are apprehensive about giving. Many Muslims are afraid to give Zakat, even knowing Zakat is mandatory in our religion. They see the local charities are scrutinized, suspended, raided by the FBI, and they are very scared and don't want to get involved.... People are afraid and they ask, will I get in trouble with the government? People are apprehensive. I tell people give your Zakat and trust and

rely on God, but I cannot assure them. What can I tell them?”⁴¹⁰

Another Imam in Michigan told the ACLU, “For sure, in the last few years, I have seen the fear existing in some people, the fear of donating to a charitable organization and even the mosque. You can feel this fear in the community.”⁴¹¹ The Imam added, “In general I see that the donation level is much lower than in the past. I see this for all fundraising here in the mosque. I can see the difference: donations are down 50 percent or even lower. I think the government has influence on people’s giving. The way the government closed some of these charity organizations, the way the government treated them, and got the information from the charities’ computers including the names of the donors, that causes a psychological fear in people’s minds. Everybody cares about their family, their business, their jobs. People don’t want to get into trouble.”⁴¹²

The ACLU did interview some donors who reported their charitable giving has not been affected by U.S. government policies and practices, but these donors were very few in number. In general, the donors whose giving has not been affected are U.S.-born Muslims in their teens and early twenties (some of whom did not earn enough money to give charity) and African-American Muslims who had always directed their donations to community groups other than Muslim charities.

In the cases of those whose charitable giving has been affected by terrorism financing policies and practices, Muslim donors articulated to the ACLU various consequences they feared if they give Zakat. The following sections detail each of these major concerns of American Muslim donors: fear of retroactive criminal liability for donations made in good faith to legal Muslim charities; fear that they would be targeted for law enforcement interviews for exercising their religious obligation to pay Zakat; and fear of immigration consequences, such as deportation or denial of citizenship or a green card, because of their charitable donations.

i. Fear of Criminal Liability for Donations to Legal Charities

A common fear expressed by donors was that they could retroactively be charged with supporting terrorism because of donations they made in good faith to legal Muslim charities.⁴¹³ Many donors the ACLU spoke with said they feared they could be held criminally liable for these good-faith donations. One former donor to HLF told the ACLU, “When HLF closed there were a lot of rumors that people who gave to HLF who had no idea that money was going to ‘terrorist activity’ would still face scrutiny.... There is a fear in the back of my mind that if someone somewhere does something wrong then it will come back to me, even if my intention is just to please God.”⁴¹⁴ The donor added that as a result,

“Now even if an organization is trusted and transparent and working with the government, what is to guarantee that the government will not shut it down? The fear that keeps me from donating isn’t the shutting down; it is the guilt by association, that if we find these people guilty, we will blame donors by association.”

“I’ve been hesitant to give, maybe because of a lack of commitment to my faith. I feel extremely guilty.”⁴¹⁵ A doctor in Michigan similarly explained, “I’ve curtailed my giving on the basis of fear that somehow I will be caught in the web of aiding and abetting terrorism. I am not taking any chances.”⁴¹⁶

A Palestinian-American donor told the ACLU that he had limited his charitable donations because of fear of guilt by past association with a charity. He explained, “[N]ow even if an organization is trusted

and transparent and working with the government, what is to guarantee that the government will not shut it down? The fear that keeps me from donating...isn't the shutting down; it is the guilt by association, that if we find these people guilty, we will blame donors by association."⁴¹⁷ Another donor told the ACLU that his fear of accusations has chilled his religious practice of making charitable donations:

The government is making accusations right and left, and this has had a chilling effect on our ability to practice our religion. I haven't been able to give. We have seen different natural disasters across the world, but when we wanted to give to a Muslim charity for religious purposes we couldn't. We have been afraid; there is a fear in the community, that if we give, we will be found guilty by association, we'll be caught in this big dragnet.... I am one individual; how am I to protect myself if I am unfairly accused? I fear being dragged into an investigation, being labeled as someone who supports terrorism.⁴¹⁸

A doctor told the ACLU that fear of criminal charges has led to a 50 percent drop in his donations and affected his religious freedom. He noted, "My donations decreased since the government has accused Muslim and Arab charitable organizations of funding terrorism. It affected my donations, because I don't want to be accused of anything and have to go through legal channels to clear my name of false allegations. I fear accusations that are difficult to defend, and I don't want the legal battles that can be endless in time, money, and effort to defend. Then the only way around it is either to stop donating or to donate only in small amounts, because they seem to go after the large donors."⁴¹⁹ The doctor further explained, "My own donations have gone down, they are down at least by 50 percent... because I fear the accusation at some point that the money went to supporters of terrorism under U.S. law. It has diminished the amount of money I can donate—even during Ramadan I can see the

amount I give has gone down significantly. This affects my religious rights."⁴²⁰

Many donors reiterated this concern that they could be held liable for their donations. These donors shared the same fears, and all described how this fear negatively impacted their charitable giving and by extension, their religious freedom:

- "Being a Muslim, now if we give charity we have the fear that we will be prosecuted or there will be a knock on the door from the FBI. It is a very critical situation. We are living in fear; that is a fact. Track the money, but give me the freedom to give."⁴²¹
- "Every decent, law-abiding citizen wants to stay away from being dragged into court or criminally charged with being on the wrong side of the law. So when I see on the news that the government is bringing a charitable organization to court, and the government is so powerful they can look back and see who gave donations, you try to stay away as far as possible."⁴²²
- "I fear that since I give to Islamic Relief, if it is closed down, then my name will be on a list of donors. Then what will happen to me? We are all living in fear."⁴²³
- "Financial transactions are being monitored, and the HLF probably had lists of their donors. Do I want to put the welfare of myself, my family, my children in the hands of some prosecutor who just assumes I'm guilty by association, because of my donation? No; I have to protect my family."⁴²⁴

In addition, numerous donors pointed out that they believed only Muslim donors bear the burden of fearing criminal liability for their donations made in good faith. According to one community leader in Michigan, "Donors are fearful about their liability for donations. Unfortunately that liability is limited

to those of the Muslim faith. If you are a Christian donor, you don't have to worry. If you ask donors of different faiths if they have any concerns [about their charitable giving], they will not have any concerns that have to do with the fear of being held liable."⁴²⁵

Some donors said that elimination of the possibility of retroactive criminal liability for their good-faith donations would make it possible for them to resume paying Zakat. "I think that the government has to take away this fear of prosecution of the

donors along with the charitable organizations," said one donor.⁴²⁶ "These organizations come along and say there are floods in Bangladesh and they have registered with the IRS, which to us is proof that they are a registered, legal organization. If that organization, in the eyes of the government, then does something that is potentially illegal, I should not be held responsible for their actions," but instead, "[w]hat is happening now is the donors are being held responsible, so now I will not donate [to Muslim charities]."⁴²⁷

Case Study: *The Story of Samir S.*⁴²⁸

Samir S. is a Palestinian Muslim professional who immigrated to the U.S. from Kuwait over two decades ago. A Texan, he sponsored an orphan through the Holy Land Foundation for Relief and Development (HLF) from 1992 until the charity's closure. Samir S. told the ACLU that since the closure of HLF has been unable to fulfill his religious obligation to give Zakat. He described his fears and concerns prompted by the government's closure of Muslim charities and intimidation of Muslim donors.

The closing of HLF has had a severe impact on my general giving because you can barely find a place to give charity to without the fear of being questioned or looked into for giving. It also has had a severe impact, in terms of the story my wife and I share....

In 1992, when we married, my wife and I gave thanks by sponsoring a child. To Muslims, sponsoring an orphan is one of the greatest things you can do, to change the life of a child. I chose HLF because I trusted it. I sponsored a three-year-old child living in a refugee camp in the Gaza Strip. I sponsored that girl until the HLF closed in 2001, from 1992 to 2001. That girl in Rafah, I could buy her a school package like a backpack through HLF. I sent money monthly and holiday gifts, and I received report cards and updates on how she was doing. One of the charges against HLF was that they sent things to the children of suicide bombers, but ironically the father of the girl was killed for being considered a spy for Israel. A family like that would be boycotted ordinarily. She was an innocent child and we wanted to give her a chance at a normal life. After the closing of HLF all contact has been terminated and we haven't heard about her.

This is something that I am worried about. It is on my mind that if the HLF defendants are found guilty, what is to stop the government from going after the people who gave to the organization? Is the government going to look at the people who supported the organization for 10 years as suspects? I don't see any wrongdoing in what I did, but this is a worry that I have: that we will be suspects even though the organization was legal at the time, and the dollar amount was only \$600, \$700 a year.

Judging by the way things are going, it seems that no one is immune. The government is already targeting close associates [of the charity]. When you see how severe the punishment is for

[others], then you wonder what will be the charges and punishment against people who donated to an organization found to be a terrorist organization. I am afraid that this is something that will come back to haunt me, because I am somebody who donated all these years....

Since then we are hardly giving anything...the amount I give is much less, it has gone down a lot. The orphan sponsorship was itself \$600 or \$700 a year. On average I gave \$1,000 a year, and now it is \$300. This is because the charges brought against people in a vengeant [*sic*] way make me worried, and I don't want to be accused of something ridiculous that would send me to jail for 20 years. It seems that people are being punished for helping people in need.

A few weeks ago a Chicago charity came to Garland. The charity provides travel expenses to hospitals for traumatized child victims of war to receive medical treatment. The thing that haunts me is what if one of those children they assist is related to someone who did something wrong? How can we investigate every child they support to make sure that the parents or family of 100 percent of the kids didn't do anything wrong? It paralyzes my giving. I can't support anything comfortably anymore, because guilt by association is a big deal these days....

Overall, the government is creating an atmosphere of fear, of intimidation, creating a collective sense of worry before doing something innocent. As far as giving, I am not free.... Fulfilling Zakat is a major concern for me. Zakat is one of the pillars, one of the obligations of Islam, and there are certain things it has to go to. Sponsoring an orphan is part of Zakat, but with everything going on now I have a hard time finding a place to put my Zakat money to an orphan or student sponsorship. Now every place you can give is a place where you can be accused that the money is being used to help terrorism....

Charity in general is a major part of Islam, but sponsoring an orphan in particular is a big deal in Islam. Part of that is because the Prophet Mohammed was an orphan himself. You'll see that in almost any Muslim country: one of the most common charity projects is an orphanage. We look at it that an orphan is basically helpless. Compensating an orphan with no parent is considered to promise us great rewards in the hereafter, because you have provided for that needy child and have changed their life. For me personally, my wife is an orphan; her dad died when she was four and her mom when she was eight. So it is personal too. In Islam giving money to that cause is one of the most important things you can do.

I am even worried about getting engaged in Islamic Relief [by donating] because who knows what is going to happen tomorrow? The HLF's books were open, and when the government came to them they came back to work with the government. So over the years we were very confident about HLF, that it was trusted and transparent. But now even if an organization is trusted and transparent and working with the government, what is to guarantee that the government will not shut it down?

The fear that keeps me from donating to Islamic Relief is the fear that the same thing that happened to HLF will happen again—that everything looks and is fine, and an executive order will shut it down and end it. What worries me isn't the shutting down; it is the guilt by association, that if we find these people guilty, we will blame donors by association. You have done something completely wonderful, something that you feel proud of, but you will be punished.

ii. *Fear of Interview by Law Enforcement*

Most donors expressed fears that they will be targeted for law enforcement interviews for exercising their religious obligation to pay Zakat. The ACLU's research reveals that federal law enforcement is engaging in practices that are substantially contributing to the climate of fear among American Muslim donors. As noted in section VI of this report, many donors reported that the FBI has targeted major donors to Muslim charities for intrusive questioning at their workplaces and homes about their charitable donations and their knowledge of the activities of Muslim charities locally and nationally. Furthermore, major donors to Muslim charities have been subpoenaed to appear in charity-related grand juries, further contributing to the community's fear.

Muslim community members are acutely aware of these FBI interviews and subpoenas of donors, which many described as outright harassment and intimidation tactics. Many donors reported a strong fear that the same would happen to them if they continued to make charitable donations to Muslim charities as they had prior to the government crackdown on Muslim charities. While donors repeatedly emphasized that they had nothing to hide, they feared that they would be put in a position to defend their donations made in good faith. One donor explained,

I stopped donating money. Because I file taxes I am so concerned about this. I have heard reports about some people who give to an Islamic charity, just small amounts of money, given from a good heart, but then are victimized by it—questioned by the FBI or facing other impediment. I am really afraid and concerned.... I also heard that they watch the bank transactions, and if you give to a [Muslim] organization you will be investigated.⁴²⁹

A Muslim community leader in Texas told the ACLU that fear of questioning by law enforcement about

donations is pervasive among American Muslims in his community. He said, "If until now one organization has been considered to be legitimate and reputable but now is accused of wrongdoing, if I give to another organization it may be accused tomorrow. Someone will knock on my door and say 'You have given money to this organization and it has done some wrongdoing,' and they will ask about

"For me to have even my past giving called into question, to an organization that at that time we didn't even know was under investigation—for the government to say we can go into the past and put you under scrutiny for your past giving—that makes me apprehensive about giving."

my donation. People don't want this to happen.... People are scared to give because they don't want to be dragged into a legal battle, to have to talk to law enforcement or in court." He added that this fear is limiting community members' fulfillment of their religious obligation to give Zakat: "This has affected fulfillment of Zakat. An atmosphere has been created in which people don't feel as comfortable giving to charities, or in charity."⁴³⁰

A former Department of Treasury official who served in the administration of George W. Bush admitted to the ACLU, "We have inadvertently created an atmosphere where Muslims are getting increasingly wary that you can give to a charity and the FBI can come knocking at your door asking why you gave to this charity."⁴³¹ La Tonya Rashidah Floyd, an African-American Muslim woman, spoke of these fears: "For me to have even my past giving called into question, to an organization that at that time we didn't even know was under investigation—for the government to say we can go into

the past and put you under scrutiny for your past giving—that makes me apprehensive about giving. My concern is that all of a sudden the government will say this charity is a front for a terrorist organization and all those who gave will be brought in for questioning.”⁴³²

A number of donors personally knew other Muslims who had been interviewed by law enforcement or immigration agents about their donations. Shada T. spoke of the chilling effect of seeing her father undergo intrusive questioning by the FBI about his donations to Muslim charities. She explained,

I am not able to fulfill Zakat fully. To be honest, I don't think I paid my full Zakat this year, because it seems every single Muslim charitable organization is under investigation. Zakat isn't meant to be this difficult. This is an obstacle for me, because I don't know where to turn to. I know it's affected me: I feel intimidated all the time, and I would give more if times weren't so rough, but I don't want any radars on me.

“I'm so scared to give charitably. They might come after me. I think when I'm giving, will they come after me? Will they put me on their hit list? There is a constant worry in the back of my mind.”

My father got a few calls from the FBI about his donations, and I know that by giving in large amounts it attracts the FBI's attention. It's an obligation for us, it's part of our religion, so we have to give, but I've looked into doing things other than giving money.⁴³³

A Pakistani-American woman told the ACLU that because she personally knew a donor whom the FBI had questioned, she had stopped making charitable donations, out of fear the same would happen to her. She said, “The government might come

after me—they might ask me who are you donating to, why are you donating, and for what? Like what happened to a person I know, the FBI will come knocking on my door and question me.... This fear is what makes me stop [donating].”⁴³⁴ A doctor in Michigan similarly explained that he has limited his charitable giving because law enforcement and immigration agents had questioned his colleagues about their donations:

The main thing is not knowing who is going to be targeted and get dragged in for questioning. I know instances of colleagues who have been taken in for questioning by the FBI and Homeland Security people because of their donations. Certain groups are targeted: Muslim charitable donors are primarily targeted, and that makes me uneasy and upset. I have limited my Zakat to a few organizations that I am directly involved with, organizations that I think, I hope, will not be targeted or investigated, like my mosque.⁴³⁵

For others, their awareness of FBI practice of interviewing donors prevented them from fulfilling their religious obligation to give Zakat. For instance, a Lebanese-American business owner said she had completely ceased giving Zakat because of her fear of being questioned about her donations: “I have stopped giving, out of fear, because I think there's a list, a blacklist of people who give.... I've watched a lot of innocent people, donors, being harassed by the FBI. I know I will be harassed by the government if I give”⁴³⁶ She added that as a result of her fear,

My donating has changed—I used to go to every fundraiser. I didn't just go to one fundraising event; I went to every fundraising event. Now I've completely stopped attending fundraisers. There's a function tonight, a fundraiser, and I'm not going. It's a legal charity, it's not one of those organizations that has been shut down, but I'm not going.... I won't give, me myself. I want to give a check to help little kids with no

parents—we're talking about human beings here—but I can't.⁴³⁷

She asked, "What happened to freedom of religion? We don't have freedom of religion because our religion requires us as Muslims to give to widows, orphans, disabled children, other needy people, and we can't practice our religion."⁴³⁸

An Indian-American donor similarly told the ACLU that he is unable to meet his minimum Zakat obligations because of fear of questioning by FBI:

I'm so scared to give charitably. They might come after me. I think when I'm giving, will they come after me? Will they put me on their hit list? There is a constant worry in the back of my mind. I am earning more now and I want to give more, but I don't want to be in the lime-light...so I just give small amounts like \$500. I fear giving more would put me on the hit list, and the government will say there is a linkage between me and the charity.... Because everything is under scrutiny, I am not able to fulfill my religious obligation to give—because I am just afraid. There is a certain amount you have to give, a minimum percentage, but with this going on I can't give the minimum amounts.⁴³⁹

He added that his inability to make the minimally required Zakat donations causes him to feel he is not being faithful to his religious beliefs:

It affects my religious obligation to give. I am not following my faith, I'm not practicing my religion as I should. I'm like a prisoner, I can't practice my religion the way I want to—there's no freedom in that respect. I'm not being honest to my faith, I'm being a hypocrite basically. Hypocrisy is so much worse than not believing something.⁴⁴⁰

One Muslim woman, Salma H., who was a dedicated donor to Muslim charities until the closure of the three largest Muslim charities in the United States,

told the ACLU, "Our religion says you have to give the Zakat, for the needy...but it has been very hard in America for us to give. I wish there were freedom to give, but I will be harassed [by FBI], so I stay out of it. I don't want to be harassed, asked where I give my money. I don't want one day to be ques-

"It affects my religious obligation to give. I am not following my faith, I'm not practicing my religion as I should. I'm like a prisoner, I can't practice my religion the way I want to—there's no freedom in that respect."

tioned 'what did you do with your money, where did it go?' I fear because I see people who are so good in giving, and they get in trouble."⁴⁴¹ She added, "I have an envelope [from a Muslim charity] asking to donate and I hold it and I'm worried: should I do it, or shouldn't I do it? This is a fundraising envelope from LIFE [for Relief and Development], to rebuild Gaza. I used to always send money when I received these envelopes, but now I am worried, should I or shouldn't I?"⁴⁴² Salma H. says it affects her religious freedom: "It affects me. When I donate I accept from God I am doing my deeds, what I am supposed to do. I feel like I am not doing my religion right."⁴⁴³

Several donors explained that their perception that the Muslim community is under surveillance and that their financial transactions are being monitored affects their charitable giving. One donor explained, "When you think someone is watching you constantly, you hesitate. I have heard that when you write a check, it is monitored.... I also heard that they watch the bank transactions, and if you give to a [Muslim charitable] organization you will be investigated.... Based on what I see in the media, the way they are monitoring people, is very outside the American way."⁴⁴⁴ A Muslim religious

leader added, “Because of this scrutiny on Muslims’ funds...we are hesitant to give Zakat. Because we feel we’re being observed a lot, we fear someone will turn up on our doorstep asking where our charitable funds have gone.”⁴⁴⁵

iii. *Fear of Immigration Consequences of Donating*

Some donors feared immigration consequences, such as deportation or denial of citizenship, asylum or a green card, because of their charitable donations. The ACLU found that immigrants, especially those who are out of immigration status or those with pending immigration relief applications, are especially fearful of making charitable donations, and most donors in this category have completely ceased giving Zakat. According to an attorney who has provided legal advice to Muslim donors in Michigan, “There is a sense people have that they can be denied an immigration benefit because of their donations.”⁴⁴⁶ This fear is not unfounded, as non-citizens can be denied entry to the United States or deported for having provided material support to organizations that have never been designated as terrorist,⁴⁴⁷ and thousands of asylum applicants have been denied asylum under material support provisions contained in immigration law.⁴⁴⁸ The Department of Homeland Security interprets the expansive immigration law ban on material support to apply even to those who are coerced into providing support to blacklisted groups, and thus have barred from asylum protection individuals forced at gunpoint to give Colombian guerillas food or a cup of water.⁴⁴⁹

American Muslims’ fear is compounded by serious delays in the processing of green card and citizenship applications since September 11, 2001. A great number of Arab, Muslim, Middle Eastern, and South Asian applicants have suffered from years-long, systemic delays in the green card and naturalization process. Many immigrants who have satisfied the requirements to become U.S.

citizens are left in limbo for months or years due to slow processing of a background check called the FBI name check, and the ACLU has filed five class action lawsuits challenging these delays.⁴⁵⁰ Donors’ fears about delays based on charitable giving may be well-founded. The specific cause of the systemic delays in the FBI name check process are primarily due to a drastic modification in 2003, which required applicants’ names to be checked not only against the names of suspects and targets of investigation (so-called “main files”), but against “reference files,” which include the names of anyone who might have come into contact with the FBI, including innocent witnesses, victims, and people who have applied for security clearances (such as for employment purposes).⁴⁵¹ If the FBI has investigated a Muslim charity and generated a list of donors or volunteers, those names may be contained in the database of names.

One Palestinian immigrant told us that he ceased giving Zakat while his application for a green card was pending. He said, “I have been in the United States for four years. For the first three years after coming I did not give any penny to charities or even to my mother, brothers, and sisters back home, because I was looking for permanent residence and citizenship, and I was scared my donations could affect this.”⁴⁵² A Lebanese immigrant similarly told the ACLU, “I was in the process of getting my citizenship [when HLF was closed]. I have been waiting three years since I applied; I am still awaiting security clearance. I worried that my citizenship would be denied because of my donations, I feared I would be the next to be arrested, so I decided I want to hold off on giving until after I get my citizenship.”⁴⁵³ A Bangadeshi immigrant also told the ACLU that he has suspended all charitable giving while his naturalization application is pending, for fear that he would be denied citizenship because of his Zakat donations:

I don’t give money to any organization, especially until I know fully what is going to happen with my immigration case.... I stopped

giving about two years ago, ever since there was a delay in my immigration case.... I am really afraid to donate money to any Islamic organization because I feel I will be a victim of misjudgment by an immigration agency. I feel great fear.⁴⁵⁴

A Palestinian who immigrated to the United States 20 years ago told the ACLU he fears he will be denied citizenship on account of his Zakat donations to legal charities, and has limited his charitable giving as a result. He explained, “I am particularly afraid of donating because I applied for citizenship two years ago.... I worry that the government will link me to my charitable giving, and will deny me citizenship because of my donations, even though they went to Muslim charities that had a good track record. I worry that my charitable giving will impact my citizenship application—maybe immigration knows that I gave to Muslim charities, and maybe that will affect the decision on my citizenship application.”⁴⁵⁵

Other donors expressed fear that immigration relief such as asylum could be revoked on account of their charitable donations. Stories of such immigration consequences circulate among some immigrant Muslim communities. For instance, one donor told the ACLU, “I am fearful that if I write a check to a charity, I will have problems. For instance, one guy with asylum who wrote a check to HLF lost his asylum benefit.”⁴⁵⁶

b. Inability to Donate Zakat to Preferred Recipients in Accordance with Religious Beliefs

Many Muslim donors reported that they have ceased making donations for overseas humanitarian relief or orphan sponsorship despite a preference to do so, and in some cases in contravention of their religious beliefs that their Zakat donations should be directed to needy Muslims overseas or for orphan sponsorship. In interviews with the ACLU, numerous Muslim donors stated that according to their religious beliefs and personal understanding of the categories of preferred or mandatory recipients of Zakat in Islam, they strongly preferred or felt obligated to give Zakat for overseas humanitarian relief, for needy individuals in their coun-

“I would prefer to send my Zakat to the needy overseas. Zakat specifically has to go to the most needy, wherever in the world. I feel it should be paid overseas, but given the fear factor I cannot send it there.”

tries of origin, for refugees, or for orphans. Many American Muslims reported that because of the closure, and in some cases prosecution, of Muslim charities that provided humanitarian assistance overseas or funded orphan sponsorship programs overseas, they felt that they could not fulfill their religious obligation to give Zakat to these preferred or mandatory beneficiaries of Zakat.

Numerous donors told the ACLU that because of fear of the consequences of donating, they make Zakat donations only to local charitable causes rather than for overseas relief. Some of these donors told us that their religious beliefs required them to give their Zakat for humanitarian aid or disaster relief for needy Muslims overseas. As one

donor explained, “You compare two societies, and you see that those overseas have greater need and live in harder times, so you should give your Zakat to them.”⁴⁵⁷ A Muslim religious leader explained,

Because of this scrutiny on Muslims’ funds, and the shutting down of HLF and other Muslim charities, we are hesitant to send funds abroad, because each penny will be scrutinized.... There are more truly deserving recipients of Zakat overseas than over here. Here in the U.S. people who are needy may have things they don’t truly need, so they may not be truly

deserving of Zakat—they may have luxuries like video games and televisions and computers.⁴⁵⁸

According to these donors, their religious belief is that Zakat should go to the neediest Muslims globally, which some said they understand to mean Muslims living in areas afflicted by humanitarian disasters (such as natural disasters or conflict) or Muslim refugees. These donors noted that according to these beliefs, their Zakat should be directed to humanitarian aid in hotspots such as Iraq, Afghanistan, Somalia, Pakistan, Kashmir, Bosnia, Chechnya, southern Lebanon, and the Occupied



LIFE for Relief and Development, a Michigan-based American Muslim charity, provided medical relief to areas in Lebanon devastated by the 2006 Israel-Lebanon conflict. Some Muslims told the ACLU that while they prefer to make Zakat contributions to Muslim charities that provide humanitarian aid to Lebanon and elsewhere overseas, they no longer do so because of fear that their donations to such populations may come under scrutiny or could run afoul of the law despite their intention to support humanitarian aid. (LIFE for Relief and Development)

Palestinian Territories, but felt that donating to needy Muslims in these areas is not an option for them. These donors expressed fear that their donations to such populations may come under scrutiny or could run afoul of the law despite their intention to support humanitarian aid.

A former Department of Treasury official who served in the administration of George W. Bush explained that because of the Treasury Department's actions, "We're probably dealing with tens of thousands of people who are being turned away from the [humanitarian] sector, who think it's a stressful time to give overseas so I'll give to my local mosque or at the local level instead. It's a shame that they feel constricted."⁴⁵⁹

One doctor told the ACLU, "Most of us, including myself, are now giving only to local causes instead of overseas, because I fear the accusation at some point that the money went to supporters of terrorism under U.S. law."⁴⁶⁰ He added, "When we are at Friday prayer, which is the main prayer for Muslims, every week it used to be that Muslim mosques would encourage people to donate to areas of need overseas, especially for humanitarian relief in Iraq, Afghanistan, Palestine, and Somalia. But now you hardly ever hear requests for donations to anyone, especially to these areas."⁴⁶¹ A Chinese-American Muslim explained to the ACLU that he was unable to contribute to relief aid after the May 2008 Szechuan earthquake, explaining, "People's conscious perspective is that it is dangerous to give overseas, because of the fear of being related to an organization that will come under the scrutiny of the government. My overseas donations have become very, very limited because of this. Before, I gave money to humanitarian relief in China. Even though China is under 'terrorist watch' there are a lot of needy people there, but now to give to China is impossible as a Muslim."⁴⁶²

One Lebanese-American Muslim told the ACLU that he used to make Zakat contributions to Muslim charities that provided humanitarian aid in

Lebanon, but no longer does so because of fear. He said, "I would prefer to send my Zakat to the needy overseas. Zakat specifically has to go to the most needy, wherever in the world.... I haven't sent my Zakat overseas since HLF closed. I am not satisfied with paying Zakat here [in the U.S.]. I feel it should

"Compensating an orphan with no parent is considered to promise us great rewards in the hereafter, because you have provided for that needy child and have changed their life. In Islam giving money to that cause is one of the most important things you can do."

be paid overseas, but given the fear factor I cannot send it there. There is this atmosphere of fear, and if it improves, then we can resume sending money overseas."⁴⁶³

One Muslim woman who previously donated to Muslim charities that provide humanitarian assistance overseas told the ACLU that she has stopped doing so. She said, "Now I try to give here, I don't send anything overseas, because I don't want to be harassed and asked where I give my money. I get mail about donations for Gaza, and I get scared and say no. I would love to help, but I don't want to be in trouble. I don't have freedom to send money overseas, such as to Gaza, because I will be questioned."⁴⁶⁴ She explained that according to her religious beliefs, refugees and schoolchildren overseas are preferable recipients of Zakat: "It would be better for the Zakat money to go overseas, for food and school. With Zakat, the most important thing is that the money goes to people in the most need, especially to refugee camps, where there is no money, no food. I want my Zakat to buy school materials for needy children overseas, but I can't."⁴⁶⁵ Another Muslim woman similarly explained,

Before I would send money abroad to Pakistan and India. Now we cannot; otherwise there would be a red flag on my bank account. I am not able to fulfill Zakat the way I want. I want to send that money to the poor people overseas who need it most, to Pakistan or Africa. Here at least the government takes care of the poor by issuing food stamps, but overseas there is no alternative, so people will starve.... I really feel thwarted because I can't provide help where it is needed.⁴⁶⁶

Many Muslims told the ACLU that their understanding of Zakat is that the preferential category of recipients is the needy in their country of origin. These donors explained that in their understanding of Islam, Zakat preferably should go to the needy closest to them, which they interpret to mean those in their countries of origin. Many of these donors told us that they are unable to give Zakat in accordance with this religious belief, because of their perception that they could be targeted for donations to their countries of origin. One Pakistani-American Muslim woman told the ACLU, "With recipients of Zakat, it starts with the first circle, kin; the second circle, distant relatives and others in your homeland; then beyond. You are supposed to take care of the poor people among your relatives and the needy people closest to you, first. But I can't."⁴⁶⁷ One Palestinian-American Muslim told the ACLU, "We say in Islam you help the needy people close to you that you know, and go from there. We have a saying in Arabic, words from the Qu'ran, that you help those closest to you. Of course I would prefer to give to a charity that directly takes money to Palestine, but there is no Muslim organization here [in the United States] now that can make it possible to give to Palestinians [without fear of government retribution]."⁴⁶⁸

A number of American Muslims reported that their ability to freely and fully exercise their religion is limited because of their perception that orphan sponsorship programs—especially for Muslim

orphans—are verboten. Many donors feared that if they sponsored a Muslim orphan, they could be targeted if it was later found or alleged that the child's relatives had committed a terrorist act.⁴⁶⁹ One Muslim who had previously sponsored an orphan through HLF for ten years until HLF's closure told the ACLU that since the closure of HLF, he feels that although he views orphan sponsorship as an obligation of his faith, sponsoring an orphan is no longer an option. He said,

Fulfilling Zakat is a major concern for me.... [T]here are certain things it has to go to. Sponsoring an orphan is part of Zakat, but with everything going on now I have a hard time finding a place to put my Zakat money to an orphan or student sponsorship.... Charity in general is a major part of Islam, but sponsoring an orphan in particular is a big deal in Islam. Part of that is because the Prophet Mohammed was an orphan himself. You'll see that in almost any Muslim country: one of the most common charity projects is an orphanage.... Compensating an orphan with no parent is considered to promise us great rewards in the hereafter, because you have provided for that needy child and have changed their life.... In Islam giving money to that cause is one of the most important things you can do.⁴⁷⁰

He explained that he is scared off from orphan sponsorship because, "The thing that haunts me is what if one of those children they assist is related to someone who did something wrong? How can we investigate every child they support to make sure that the parents or family of 100 percent of the kids didn't do anything wrong? It paralyzes my giving."⁴⁷¹

c. Non-Muslim Charities Not an Adequate Option

The government hasn't said you can't give Zakat—Zakat isn't outlawed—but the inference is that you can't give to a Muslim charity. People have tried to find an accepted charity to give to, but if it is a Muslim charity there is a cast on it.

—Muhammad H., Dallas, Texas⁴⁷²

There are Christian charities and Jewish charities, but why not Muslim charities? Christian and Jewish charities exist to fulfill their religions. Being a Muslim, I want to fulfill my religion. Zakat, which is our charity as Muslims, it has to go through certain channels. I am not an Islamic scholar, so I don't know who Zakat is to be distributed to and how it is to be handled; I must rely on Muslim charities for that. As far as where my Zakat is going, I have to give Zakat to those who know the rules of how to distribute the money. Being a good Muslim requires this.

—Abdullah J., Allen, Texas⁴⁷³

American Muslim donors interviewed by the ACLU nearly unanimously agreed that they could not fulfill their obligation to give Zakat by making donations to secular charities or charities of other faiths. Though there is not unanimity in this belief, many donors reported that they believe that Zakat must be given to other Muslims, and accordingly believed Muslim charities were the only means of ensuring their Zakat was distributed among needy Muslims. Others reported that their obligation to give Zakat would not be fulfilled if it was not distributed in accordance with the rules prescribed in Islam regarding the permitted recipients of Zakat. For these donors, only Muslim charities or mosques are capable of distributing Zakat in accordance with their religious beliefs.

According to Laila al-Marayati, former presidential appointee to the U.S. Commission on International

Religious Freedom and a former member of the State Department's Advisory Committee on Religious Freedom Abroad who serves on the board of directors of a Muslim charity,

People ask 'why can't Muslims give to just any group?' But there are certain requirements in Zakat, and by giving to certain organizations that have experience with this you are fulfilling your obligation in the way you are required. For example, money given during Ramadan has to be spent only on a project, not on overhead. People look for that reassurance, and they ask [Muslim charities] about this. You can't ask CARE, Caritas, or Save the Children about this. This is the other piece of the religious freedom aspect: Muslims need to be sure that they are giving to an organization that knows what is involved [in distributing Zakat]. Giving to a Muslim group isn't just about giving to a Muslim recipient, but giving to an organization that understands the religious rules.... People need a group that they can trust Islam with—not just any organization can gain that trust.⁴⁷⁴

Religious scholars repeatedly told the ACLU that in their understanding of Islam, a Muslim could not discharge her Zakat obligation by donating to a secular charity or a non-Muslim faith-based charity. According to one Imam, a non-Muslim charity would not understand that the Qu'ran specifies approximately eight specific categories of recipients for Zakat. The Imam explained, "A group that is not Muslim first wouldn't understand what Zakat is, so they wouldn't know the laws of Islam, which clearly outline who should receive Zakat. So I can't give my Zakat, my 2.5 percent, to non-Muslim groups."⁴⁷⁵ According to another Imam,

Christian or secular charities will not work for Muslims. For us, Zakat is a part of our religious tradition, and it must not be treated the same way as Christian charity. Collection and administration of Zakat must be in the hands of Muslims. The beauty of religious freedom in

this country is we do not force the articles of one faith onto another faith. It is unacceptable for Muslim charity to be administered by those who are not Muslim. Secular charity is charity, but ours is faith-based, it is part of our belief system and very strongly connected to a strong pillar of Islam. Our mandatory charity cannot be treated as secular giving. It would be disre-

“Giving to a Muslim group isn’t just about giving to a Muslim recipient, but giving to an organization that understands the religious rules. People need a group that they can trust Islam with—not just any organization can gain that trust.”

specting our religion to have the government or a secular organization administer Zakat. Because this is part of our faith, because Allah orders the giving of Zakat, the administrator of Zakat must understand that Islam has specific characteristics, and that there are specific categories of recipients of Zakat.⁴⁷⁶

Donors also told the ACLU that according to their religious beliefs, they could not donate Zakat to a non-Muslim charity. One donor explained, “Zakat has a very strict rule surrounding who receives it: very poor destitute Muslims, travelers, people who can’t give Zakat.... You can give a secular charity Sadaqah [optional charity], but not Zakat [obligatory charity]. Zakat is just for Muslims.”⁴⁷⁷ Another Muslim said proper distribution of Zakat is necessary to fulfill his religious obligation to give Zakat:

The obligatory charity, Zakat, has to be handled by those who know exactly the proper rules for distributing Zakat. Zakat is obligatory, and has to be given to about eight categories of preferred recipients for Zakat. There are proper ways in which Zakat is given out, and these eight categories are properly categorized by the proper organizations. Someone who has that understanding when distributing that charity is extremely important. It is vital to distribute Zakat properly to please God and to attain religious fulfillment.⁴⁷⁸

Some donors also expressed concern that a non-Muslim, faith-based charity would potentially use their donations to promote a faith other than Islam, in contravention of their religious beliefs. One donor said, “If I believe in Islam and believe it is the true religion, then it would be hypocritical and contradictory of me to give a big chunk of my money to promote Christianity, Hinduism, or Judaism—for example, to give money to a Christian charity that goes to Sudan to convert people to Christianity.”⁴⁷⁹ An Imam explained, “We can’t give charity to someone who is promoting another religion, so we wouldn’t give to a church.”⁴⁸⁰

d. Religious Rights Violations Due to Continued Sequestering of Charities' Funds

The millions of dollars that were confiscated from all the charities, I think that every penny of that money must go to all the needy families the donors intended it to go to. It is the right of the giver to give the Zakat to its intended recipient, and it is the right of the recipient to receive that donation. It is a religious donation, not a business transaction. According to our faith it is a religious giving that must be respected.

—Nabil Sadoun, Richardson, Texas⁴⁸¹

The federal government continues to sequester charities' frozen funds and on the basis of all publicly available information, the Department of Treasury has denied all requests to transfer frozen charitable funds to humanitarian assistance or other charitable causes in the spirit of the original donors' intentions. The Department of Treasury's *2007 Terrorist Assets Report*, which the Treasury Department has not updated, reports that the seized assets of international terrorist organizations, a category that includes U.S.-based charities whose assets were seized pursuant to an OFAC blocking order, totals over \$20 million (\$20,736,920).⁴⁸² Some of these frozen charitable funds have been held in U.S. government bank accounts for over seven years. The laws that authorize the freezing of assets do not set any timeline or limit for the discharge of these funds, such that the frozen charitable funds could be held indefinitely. The Department of Treasury has denied repeated requests to allow transfer of blocked funds for humanitarian or disaster relief in accordance with the intent of the originators of these funds, charitable donors, even though the Department of Treasury has authority to allow transfer of frozen funds.⁴⁸³

While the different schools of Islam do not have clear rules on whether the religious obligation of giving Zakat has been satisfied if the donor gives the money to charity but the funds are subsequently seized before distribution to the intended recipients, several Islamic scholars and religious leaders explained to the ACLU that in their view, the obligation to give Zakat is not fulfilled when the charitable funds are seized and frozen. According to one Imam, "When a charity's assets are frozen, a lot of people feel their Zakat has been unfulfilled, unaccepted by God, and therefore they have to give more money to fulfill their obligation."⁴⁸⁴ The Imam further explained that in his understanding of Islam, "From a technical point of view, Zakat is unfulfilled if it does not reach its rightful owners. The rightful owners of wealth are the needy and poor, not the Treasury Department or the U.S. government banks. Zakat, as mentioned in the Qu'ran, is not fulfilled if it does not reach the rightful owners. There is a consensus of scholars of Islam that if the money does not reach a needy person then Zakat is not fulfilled."⁴⁸⁵

Another Imam told the ACLU, "About recipients of Zakat, it is a very strong general rule in Islamic law, which is connected to belief, that the intent of the donor must be stuck to. The intent of the donor is law. Because it is belief and faith and intention in the heart, so the act of giving Zakat must be bound to the intention of the donor.... This rule is very strong in Islam. If the intended recipient of Zakat dies, we have to go back to the donor to ask for permission to give to someone else even if that other person is in the same circumstances. We are bound religiously to get permission. The rule is you must observe the intention of the donor, otherwise religiously we feel ourselves to be a sinner."⁴⁸⁶ The Imam continued, "Zakat is never fulfilled if it does not go to its intended recipients. It is a big sin from our theological perspective. Zakat cannot be held back from needy people, because it must reach needy people as soon as possible—so it must not be stored somewhere and not given to the needy people who were intended to receive it."⁴⁸⁷

For some Muslims interviewed by the ACLU, the government's seizure of Zakat that they gave in good faith has prevented them from fulfilling their obligation and thus infringed on their free and full exercise of their religion. The ACLU interviewed a number of Muslim donors who had made a Zakat donation to HLF just before its funds were seized. Some of these donors told the ACLU that the freezing and holding of their Zakat money prevented them from fulfilling their religious obligation to give Zakat. One donor said, "If the money doesn't reach there, it left you but it didn't cleanse you, it didn't cleanse your soul. It doesn't do any good if it didn't create a benefit for someone in need, if it's held in a government bank. My religious right was definitely violated by the government when it held my Zakat."⁴⁸⁸ Another donor told the ACLU, "I gave to HLF. There is religious consequence for me, because I gave and that money is held by the U.S. government.... I have the small sorrow in my heart that that person should have received that Zakat money and could have eaten one more meal."⁴⁸⁹

Of the government's continued holding of the frozen charitable funds, one Texan donor said, "Religiously, it is the worst thing that can happen."⁴⁹⁰ He added, "The government has put their hands on millions of Zakat dollars given by citizens to give to orphans and the needy. Why should we pay [Zakat] when we don't know if our religious duty is fulfilled or has been taken by the government? Me, personally, I donated to HLF in the last day or two before HLF closed.... Religiously, money dispersed, especially when it is Zakat, when you put it to a certain way, it should go to the exact intention that you have. It must go according to your will, the donor's intent. If you gave the money for an orphan in Palestine, it is unacceptable even for it to go to an orphan in Iraq."⁴⁹¹

A donor in Michigan told the ACLU, "My money to HLF was frozen, big-time.... My religious rights have been violated because the Zakat we donate is something we are obligated to give, and we cannot

just give it anywhere. We have to give it to Islamic centers, orphans, for the needy such as the homeless, and to support civil rights and empowerment of the community. I donated to HLF for orphans and needy families overseas, and that money was frozen, the donations didn't go through. The money is obligated to go to the orphans and needy people and it didn't go to them, it is in a government bank."⁴⁹² The donor expressed concern that he is unsure how to fully discharge his religious obligation to give Zakat in light of the continued hold-

"If the money doesn't reach there, it left you but it didn't cleanse you, it didn't cleanse your soul. It doesn't do any good if it didn't create a benefit for someone in need, if it's held in a government bank. My religious right was definitely violated by the government when it held my Zakat."

ing of his Zakat funds. He said, "We ask the Imam and other religious scholars, what should we do [to meet our religious obligation]? Do we give again, through a different organization? We have questions about this."⁴⁹³

Moreover, some donors pointed out that the sequestering of their Zakat funds violates not only their religious right to give Zakat, but also the religious rights of the intended recipients of those funds to receive Zakat. According to one donor, "Religiously, it is the right of the needy recipients to donations. The needy have religious rights to receive Zakat from the resources of the rich, whether government or individuals."⁴⁹⁴ Another donor said, "In Islam it isn't only an obligation to give, but for the needy it is their right to receive that money."⁴⁹⁵

Not only has the Treasury Department denied specific licenses requested by designated charities for transfer of frozen charitable funds to humanitarian relief, but in 2004 and 2007, the U.S. government filed criminal forfeiture actions against U.S.-based Muslim charities Holy Land Foundation for Relief and Development (HLF) and the Islamic American Relief Agency-USA (IARA), respectively.⁴⁹⁶ An attorney representing IARA in a civil case in which IARA seeks the release of the funds for humanitarian aid, told the ACLU, “Donors have expressed an intent to help the impoverished, such as to support IARA’s meal-a-day program in Zaire. Over a million dollars of donors’ religious money that was donated has been seized, and orphans have been left without donations. The forfeiture action *further* frustrates the donors’ intent.”⁴⁹⁷

IX.

Chilling Effect on Association with Muslim Community and Religious Organizations

a. Limitations on Freedom of Association Due to Climate of Fear

Mosques not only serve as prayer spaces, but as hubs for various facets of religious and cultural life. Mosques also serve as religious schools, charity distribution centers, Arabic language schools, and youth centers. ACLU research reveals that the atmosphere of fear created by the closure of Muslim charities, law enforcement interviews of Muslim donors and other Muslims, and criminal prosecution of some Muslim charity leaders for material support, is limiting American Muslims' freedom to associate with Muslim religious and community organizations, including mosques, Islamic schools, Arab and Muslim advocacy organizations, and Muslim charities.

Many American Muslims reported to the ACLU that the climate of fear created in part by the government's policies regarding Muslim charities and charitable giving affects their participation in a wide range of religious activities. In Michigan and Texas, Muslim community leaders and members described to the ACLU the consequent chilling effect on Muslims' participation in religious activities such as congregational prayer at the mosque on Friday, Eid celebrations at the conclusion of Ramadan, or other communal religious rituals. This chilling effect implicates both freedom of religion and association, in contravention of constitutional and human rights protections.

An Imam in Michigan told the ACLU, "I feel that the atmosphere of fear has affected the religious freedom of some people. Some people think even going to Friday prayer or another religious ritual at the mosque can get them in trouble. They don't feel comfortable participating. That is very unfortunate—people conclude there is a level of risk, if they were to exercise their religious freedom."⁴⁹⁸ A Muslim donor in Texas, Rabia Said, told the ACLU of the effect on Muslims in Texas,

What they are affecting is the institutions through which I participate in my religion. How do I explain to my son that unlike a church that has a picnic in the park, we are unable to participate in such events? Because participating in events creates a headache for us, we decide why don't we just stop having these events? We want to participate because this is part of our religion, but what is being affected is the degree of my participation in my religious institutions. We don't want to sacrifice who we are and what makes us Muslims.⁴⁹⁹

Texan Muslim Salman O. told the ACLU, "The number of volunteers at the masjid [mosque], the people who associate with the masjid, who donate regularly [to the mosque], they have gone down. People want to keep their sheet clean. When the government made the list of unindicted co-conspirators, including NAIT [North American Islamic Trust] and ISNA [Islamic Society of North America], it really created fear, because these are mainstream organizations, umbrella organizations. People view these as mainstream, liberal groups, and they see those being targeted."⁵⁰⁰ Nadir Y. similarly said, "Since the government harassment started, membership to the masjid [mosque] has gone down about 50 percent, because of the retaliation [against Muslim charities] from the government. We have Islamic schools that can hardly find board members to run it; any Muslim community group, it's the same. We see people running away. People are shying away from leadership."⁵⁰¹

According to Koresh A.,

The impact is not only on the individual level, but also on the social level. There are people who stopped coming to the mosque because of fear that the government is tagging the cars of people going to the mosque. The reality is it affects every religious aspect of a Muslim's life—they are not showing up at the mosque, are not giving to the mosque, we cannot have religious conversations over the phone or in the mosque because we fear someone is listening and will misunderstand what we say. There are people who are fearful and therefore won't be on the board of the mosque. I personally know people who are on the board of the mosque and

will not have their name officially on the board because they are fearful that the government will close down the mosque and then the government will come after them.⁵⁰²

One Muslim Texan described his fear of criminal prosecution if he continued in the activities he participated in at his mosque prior to the closure of HLF:

Especially during the few years after HLF closed, I didn't want to do anything for the community, I wanted to stay home. After HLF closed I didn't do as many activities as I used to for the mosque. We used to do activities at the mosque for the youth—we would take them



Worshippers pray during the Eid celebration at the conclusion of Ramadan. About 5,000 Muslims attended the congregational service. (Thomas Busler/Memphis Commercial Appeal)

on a monthly picnic for youth or small families, or have a meeting. These activities are scaled back after the closure, and these activities haven't resumed fully. I also used to lead Boy Scouts with the mosque, but I stopped for a while, mainly because of intimidation and fear that the government might suspect that we are doing something. I saw that some [Muslim] brothers went to jail and I don't want to go to jail.⁵⁰³

The ACLU also found that there is a common perception among many members of the Muslim communities in Michigan and Texas that those active with Muslim community and religious organizations will be targeted for interviews with law enforcement or for criminal charges on account of their constitutionally protected association with legitimate Muslim community and religious organizations. Our research reveals that this perception of the price of association with Muslim community and religious organizations affects Muslims' participation in Muslim community organizations.

A Muslim community leader in Texas told the ACLU, "A vital freedom is the freedom to be active in issues for the community. Now there is a high price for being active, whether active in charities, active in mosques, or active in [Islamic] schools, or other Islamic organizations.... This atmosphere discourages Muslims from being active, because being active can cause you to be put in jail."⁵⁰⁴ He continued, "The price of religious activism has paid a toll on those active in the religious community: people have been indicted; their businesses suffered; they have faced immigration issues such as delays in citizenship, delays in visas, or deportation; they have faced profiling in the airport, harassment by the IRS, and interviews by the FBI."⁵⁰⁵

According to one Muslim woman, Melissa R., "My husband has turned down several offers to be on the boards of organizations. He even declined to be on the board of our mosque."⁵⁰⁶ She continued, "We are very community-oriented people, and we

want our children to take leadership roles as they become adults, but we have to tell them your own self-preservation is more important than being involved in the community because you don't know what the government will do next. I think the Muslim community organizations are benign, but I will not choose to work with them because of the fear of guilt by association—it's too risky."⁵⁰⁷

One Muslim involved with a Palestinian human rights advocacy organization in Michigan said,

"How do I explain to my son that unlike a church that has a picnic in the park, we are unable to participate in such events? Because participating in events creates a headache for us, we decide why don't we just stop having these events? We want to participate because this is part of our religion, but what is being affected is the degree of my participation in my religious institutions. "

"People are shying away from joining us and supporting us, because of the government's grip on Muslim charities and the Muslim community. A number of people are no longer coming to our events, fearing that they will be persecuted for the organizations they associate with and what they say. It is at the point where we feel the government can prosecute us not just for terrorism but also for our association and speech."⁵⁰⁸ He added, "People tell us they want to support us and they want to come to our events, but they fear to come because they don't want to express any support for Palestine. The Holy Land Foundation case was a big cause of this—that legal battle was followed very closely here [in Michigan]."⁵⁰⁹



A Muslim woman prays with other congregants during a weekly Jumu'ah prayer service at the Masjid Al-Muminun mosque in Memphis, Tennessee. Much like Christian congregational worship on Sundays, many Muslims worship in congregation for Jumu'ah prayers held every Friday. (A.J. Wolfe/Memphis Commercial Appeal)

Another Muslim told the ACLU that the atmosphere of fear has limited his ability to get involved in local and national advocacy efforts regarding the closure of Muslim charities; like many others interviewed for this report he preferred not to be identified:

The climate of fear has affected my association, absolutely. I think twice—for example, I want to go meet with the Muslim Legal Fund of America guy to see what I can do about the closure of Muslim charities, but I am afraid to go to his office to meet with him. I am afraid the FBI will follow me after that meeting. I will

go to a masjid [mosque] but I am afraid to put my name down with any group. I even thought a hundred times before giving my name [to the ACLU].⁵¹⁰

The ACLU also documented a common fear of appearing in public with those who have been indicted or are perceived to be under investigation, because of fear of guilt by association. Several American Muslims cited the high-profile criminal prosecutions of Muslim charity leaders and employees for material support, and their perception that the government has successfully imposed guilt by association on these community members, as a reason for this fear. One Muslim woman who worshipped at the same mosque as several of the HLF defendants told the ACLU, “The fear has really affected how my family reaches out to certain people in our community—you don’t want to be seen with certain individuals. I have a fear of being investigated, of being associated with people who have [legal] claims against them. With the government it is a guilt you can’t deny, the guilt by association—it’s a web you can’t get out of, it’s endless. We’re more cautious about attending certain fundraising dinners because of the fear of taking photos [with people] or taking down names.”⁵¹¹ She added,

We don’t have as much outward participation in our religion as we used to. After the closing of HLF, we didn’t know that if praying in congregation meant the government was taking photos of our faces together, and we decided we don’t have to pray at the mosque. Because of the government’s intimidation, if we pray in congregation we fear more questioning: what is your connection to that person you were seen praying with? More people like us are choosing to pray at home instead of getting out and praying in the congregation. There is a lot of suspicion and fear. We have moved away from being in the mosque as much.⁵¹²

In addition, the ACLU interviewed some who expressed a fear of associating with Muslim charities, such as by participating in Muslim charities' boards of directors. According to Laila al-Marayati, president of the board of directors of KinderUSA, a Texas-based Muslim charity, "In terms of taking on the role of a board member, it is hard to recruit people to be on the board.... People don't want to be on any list, to be associated with anyone. When we approached people about being board members, one person said yes, but only if you stop calling yourself a Muslim organization. And that was a Muslim. It is a rational argument, but it is rooted in that fear of being associated with a Muslim organization."⁵¹³ An employee of another Muslim charity told the ACLU, "Even charities have a hard time finding board members and volunteers. This is the case with our charity."⁵¹⁴

X.

Collateral Consequences Undermine Counterterrorism Efforts

With the closing of charities it is causing people to put money under the rug—the government is driving charitable money underground. It is better for everyone to bring everything out in the open, to allow Muslims to integrate rather than harassing and alienating them.

—Nadir Y., Irving, Texas⁵¹⁵

The ACLU's research documented several collateral consequences of U.S. terrorism financing policies and practices towards U.S.-based Muslim charities and Muslim donors that actually undermine counterterrorism efforts. The ACLU's research showed that these policies and practices are alienating Muslim Americans; are damaging U.S. reputation and diplomatic efforts in Muslim countries by giving the appearance of a war on Islam rather than on unlawful terror financing; are fomenting fear that drives Muslim Americans' charitable donations underground; and are creating a chilling effect on overseas humanitarian relief efforts. Each of these collateral consequences is counterproductive to the U.S. government's counterterrorism efforts.

The ACLU found that instead of working with American Muslim donors and Muslim communities as valuable allies in the fight against terrorism financing, the U.S. government's terrorism financing policies and practices have alienated Muslim Americans and engendered mistrust of law enforcement.⁵¹⁶ Many American Muslims told us that the government's closure of Muslim charities and intimidation of Muslim donors has undermined

their trust in federal and local government, including law enforcement authorities. One Muslim community leader in Texas told the ACLU, "A fissure has opened up between the government and our community, and this wound is not healing."⁵¹⁷ The 9/11 Commission staff found that terrorism financing policies "can undermine support in the very communities where the government needs it most," and "risks a substantial backlash."⁵¹⁸

Terrorism financing policies also undermine U.S. reputation abroad, especially in Muslim countries that are crucial allies in the "war on terrorism financing." In fact, Treasury Department-led terrorism financing efforts could undermine diplomatic efforts in Muslim countries, just as President Barack Obama reaches out to the Muslim world. U.S. terrorism financing policies give the impression that the fight against terrorism financing is a war on Islam, directly contradicting President Obama's recent announcement before the Turkish Parliament conveying our government's "deep appreciation for the Islamic faith," and making clear that "America's relationship with the Muslim community, the Muslim world, cannot, and will not, just be based upon opposition to terrorism."⁵¹⁹

Ibrahim Warde, an expert on Islamic banking and finance, Middle Eastern politics, and international political economy, told the ACLU of the crackdown on U.S.-based Muslim charities, "It is certainly counterproductive to the effort of winning the hearts and minds of Muslims, in that there has been a big outreach effort in many respects and when this specific aspect of equating Islamic charities with terrorist financing becomes known, this in and of itself creates a lot of suspicion."⁵²⁰ He added,

It makes it difficult to justify that, in the words of President Obama, the U.S. is not at war with Islam—given the attack on Muslim charities.... One word we hear a lot in terms of the U.S. relationship to the Muslim world is respect and Obama is good at using it, but when we see the smearing of Muslim charities, it complicates

things if the U.S. government is trying to project a policy of respect.⁵²¹

Warde further cautioned, “Many big diplomatic initiatives of the Obama administration, especially in the Islamic world, could be derailed by these policies.”⁵²²

In addition, the ACLU documented a significant rise in cash donations as a proportion of Muslim donors’ donations. Because of fear of the consequences of donating to legal Muslim charities, many Muslims whose charitable giving has not been completely chilled said they now make donations exclusively in cash in order to preserve their anonymity and protect themselves from reprisal. According to experts, this proportionate rise in cash donations may complicate U.S. government efforts to track flows of funds.

“One word we hear a lot in terms of the U.S. relationship to the Muslim world is respect and Obama is good at using it, but when we see the smearing of Muslim charities, it complicates things if the U.S. government is trying to project a policy of respect. Many big diplomatic initiatives of the Obama administration, especially in the Islamic world, could be derailed by these policies.”

Furthermore, ambiguities of the policies on material support and the climate of fear created by these policies have impacted vital humanitarian work overseas and cost lives. Tragically, U.S. counterterrorism laws make it more difficult for U.S. charities to operate in parts of the world where

their good works could be most effective in supporting sustainable community development and civilian infrastructures, countering extremism, and enhancing peace and security.

a. Alienation of Muslim Americans

The ACLU’s research showed that the federal government’s actions towards Muslim charities and donors have alienated Muslim Americans and created mistrust of law enforcement, potentially undermining counterterrorism efforts.⁵²³ A report by the Illinois Advisory Committee to the U.S. Commission on Civil Rights found that Arab-Americans and Muslim Americans were far more concerned by the closure of Muslim charities, the use of secret evidence, and the government’s national interview program of Arab and Muslim men, than by hate crimes.⁵²⁴ The ACLU’s own research found that American Muslims identified the government’s actions against Muslim donors and Muslim charities as a primary reason for their sense of alienation and mistrust of law enforcement and the federal government. According to one community activist in Texas, “A fissure has opened up between the government and our community, and this wound is not healing.”⁵²⁵

A Chinese-American Muslim told the ACLU, “Day by day I lose trust and faith in the U.S. government doing what’s right. We never saw any major proof of allegations leveled against charitable organizations or individuals involved with those charities. You start to lose confidence in the government because whatever allegations it presents can’t withstand the test of the courts.”⁵²⁶ An African-American Muslim similarly said, “The government lost a lot of trust, especially after seeing how they handled things in the courtroom [in the HLF case]—especially since this was the higher-ups, not just the FBI agents who have Iftar [the meal to break fast during Ramadan] with you. I wonder how the relationship is supposed to be after this.”⁵²⁷ The

president of a Detroit mosque told the ACLU, “We want to help in building the U.S.A., and we want to work with the Department of Homeland Security as trusted partners, but we feel they treat us as guilty until proven innocent. They want us as spies, not as partners. Bridges are not being built, no—they are being torn down.”⁵²⁸

A 9/11 Commission staff report on terrorism financing cautioned that the crackdown on Muslim charities under terrorism financing laws “can undermine support in the very communities where the government needs it most,” and “risks a substantial backlash.”⁵²⁹ In its analysis of OFAC’s designation of Benevolence International Foundation (BIF) and Global Relief Foundation (GRF), the 9/11 Commission staff concluded, “Although the OFAC action shut down BIF and GRF, that victory came at considerable cost of negative public opinion in the Muslim and Arab communities, who contend that the government’s destruction of these charities reflects bias and injustice with no measurable gain to national security.”⁵³⁰

A former Department of Treasury official who served during George W. Bush’s administration observed that the Treasury Department’s actions have alienated American Muslims. He told the ACLU, “I think that it has certainly created a sense of alienation among Muslims. I don’t think there’s any doubt about it. The Muslim community continues to allege that this is Islamophobia on the part of the U.S. government and it has treated the U.S. Muslim community unfairly and made it harder for Muslims to donate.”⁵³¹ He added, “It causes endless public relations issues that cannot be rectified with a simple statement. The continued policies continue to create the perception among Muslims that they are being persecuted.”⁵³²

Some experts have suggested that alienation of American Muslims may hamper Treasury Department and law enforcement efforts to combat terrorism financing. Terrorism financing policy expert

Ibrahim Warde told the ACLU that the U.S. government’s actions against U.S.-based Muslim charities has “created ill will with respect to the Islamic community, and the chilling effect on Zakat donations in many respects harms the outreach effort and the effort to have genuine cooperation of Mus-

“We want to help in building the U.S.A., and we want to work with the Department of Homeland Security as trusted partners, but we feel they treat us as guilty until proven innocent. They want us as spies, not as partners. Bridges are not being built, no—they are being torn down.”

lims on the issue of terrorism financing and the war on terror.”⁵³³ He added, “There can be extremists, but that is not the way to get at them, to antagonize the entire community through broad-brush policies. Instead, the U.S. government must buy the support and allegiance of the potential support system, in this case the Muslim community in the U.S., by getting their good-faith cooperation by demonstrating that the government is treating them fairly.”⁵³⁴ Warde also noted, “The government has everything to gain by having the vast majority of Muslims dealing with the government on the basis of full trust and cooperation, but this becomes very difficult when there is a mainstream feeling among Muslims that they are under attack by the government. For the government to identify who are the extremists it is important for the government to have a good relationship with Muslims and mosques, but because of the attack on Muslim charities it is difficult to achieve this.”⁵³⁵

A former Department of Treasury official similarly told the ACLU, “[Alienation of Muslims] hampers financial counterterrorism efforts. The more Muslims feel alienated the less they are going to feel compelled or amenable to assist the U.S. government. The more this happens, the more impositions placed on their charitable sector, the more they see this as unfair strictures, the less they are going to cooperate.”⁵³⁶ In February 2009, FBI Director Robert Mueller acknowledged in a speech at the Council on Foreign Relations that the FBI requires cooperation from trusting populations and therefore must increase its efforts to work in cooperation with communities that distrust law enforcement. Mueller noted, “Too often, we run up against a wall between law enforcement and the community.... Oftentimes, the communities from which we need the most help are those who trust us the least. But it is in these communities that we must re-double our efforts. The simple truth is that we cannot do our jobs without the trust of the American people.”⁵³⁷

Former FBI street agent and supervisor James Wedick told *Frontline* that it is possible for law enforcement to reverse course and rebuild trust with the Muslim community: “[R]ight now [the Muslim community] distrust[s] the bureau.... The damage has been done, but it’s not too late—it’s not. They can reverse course. We are interested in locating and finding terrorists. Even the Muslim community, they’re not interested in seeing fundamentalists come into their neighborhood and preach ideas of jihad. It’s imperative upon the bureau to get with the community leaders. If they do, I guarantee you it will be productive.”⁵³⁸

b. Undermining U.S. Reputation and Diplomatic Efforts in Muslim Countries

I...want to be clear that America’s relationship with the Muslim community, the Muslim world, cannot, and will not, just be based upon opposition to terrorism.... We will convey our deep appreciation for the Islamic faith, which has done so much over the centuries to shape the world—including in my own country. The United States has been enriched by Muslim Americans.

—President Barack Obama, April 6, 2009⁵³⁹

Reports suggest that there are high diplomatic costs for federal government actions against U.S.-based Muslim organizations. Treasury Department closures of Muslim organizations undermine international cooperation with the United States on terrorism financing issues, may derail President Barack Obama’s diplomatic efforts in Muslim countries, and tarnish U.S. reputation in the Muslim world.

While a Treasury Department report notes that, “International alliances against terrorism are crucial because the overwhelming majority of terrorists’ assets, cash flow, and evidence lies outside our borders,”⁵⁴⁰ evidence suggests that in some cases the Treasury Department’s actions have threatened vital international alliances to stem terrorism financing. The Department of State generally pressures other countries to freeze the assets of organizations designated by the Treasury Department. This backfired in the cases of U.K.-based Muslim charity Interpal and Somali remittance agency Al-Barakaat. In these cases, government or court review in the United Kingdom, Canada, Luxembourg, and Sweden found a lack of evidence to support U.S. actions. According to terrorism financing policy experts, both cases exhausted international goodwill and hampered further international cooperation on terrorism financing issues.

According to Ibrahim Warde, an expert on Islamic banking and finance, Middle Eastern politics, and international political economy, the Al-Barakaat case “proved that the U.S. was often playing fast and loose with facts and evidence.”⁵⁴¹ Warde found that the case “generated great cynicism towards the process of terrorist designation and asset seizure.”⁵⁴² He told the ACLU, “This was when many countries stopped cooperating with the U.S., because the U.S. had said it had evidence of supporting terrorism...but all the ‘secret’ evidence the U.S. had was press clippings. That was when many became suspicious that the U.S. didn’t actually have evidence despite claims it had secret evidence it couldn’t disclose. At that time it became more complicated to convince the UN to include groups on the terrorism financing blacklist as well.”⁵⁴³

Furthermore, Treasury Department closures of Muslim charities may undermine President Barack Obama’s diplomatic efforts in Muslim countries. Warde told the ACLU, “It is certainly counterproductive to the effort of winning the hearts and minds of Muslims, in that there has been a big outreach effort in many respects and when this specific aspect of equating Islamic charities with terrorist financing becomes known, this in and of itself creates a lot of suspicion.”⁵⁴⁴ He added, “It makes it difficult to justify that, in the words of President Obama, the U.S. is not at war with Islam—given the attack on Muslim charities.... One word we hear a lot in terms of the U.S. relationship to the Muslim world is respect and Obama is good at using it, but when we see the smearing of Muslim charities, it complicates things if the U.S. government is trying to project a policy of respect.... Many big diplomatic initiatives of the Obama administration, especially in the Islamic world, could be derailed by these policies.”⁵⁴⁵

According to Shereef Akeel, an attorney for Michigan-based Muslim charity Life for Relief and Development (LIFE), “LIFE is now the largest Muslim charity in America. If LIFE is closed down and it is announced on Al Jazeera, that will undermine

Obama’s agenda to mend fences. If we target the largest Muslim charity and shut it down based on a scintilla of evidence, based only on conduct in the 1980s far-removed from terrorism—just nothing—the effect could damage our [national] interests further.”⁵⁴⁶ According to the Executive Director of the Michigan office of the Council on American Islamic Relations (CAIR), “CAIR is the most recognized U.S. Muslim organization in the Muslim world—when CAIR executive directors travel in the

“This was when many countries stopped cooperating with the U.S., because the U.S. had said it had evidence of supporting terrorism, but all the ‘secret’ evidence the U.S. had was press clippings.”

Muslim world people know who we are. The relationship between this government and the American Muslim community has a direct relationship to the perception in the Muslim world of the U.S. government, especially among intellectuals.... Smearing CAIR as an unindicted co-conspirator sabotages the new president’s outreach with the Muslim world.”⁵⁴⁷

Many interviewees told the ACLU they had personally observed that the targeting of American Muslim charities and donors tarnishes U.S. reputation in Muslim countries. Islamic banking and finance expert Ibrahim Warde noted,

[T]he policies on Muslim charities have an enormous impact on reputation abroad. If you look at the media in Muslim countries, the closures of Muslim charities are played up in a big way in the media. So the issue of winning hearts and minds, whenever there are unwarranted attacks on Muslim charities, it does

weaken the U.S. position in Afghanistan, Iraq, and among Palestinians, and it complicates the task of the U.S. government. I travel a lot in the Middle East and I was struck by the high profile of these kinds of prosecutions, anything to do with Islamic charities. Here in the U.S. you occasionally hear stories but by and large people aren't aware of this, whereas in Muslim countries everyone is aware of these stories and actions against Muslim charities.⁵⁴⁸

In interviews with the ACLU, American Muslims repeatedly emphasized that Muslims abroad are keenly aware of U.S. policies towards Muslim charities. One Michigan Muslim community leader noted, "This is reinforcing the perception that the government has a problem with Islam, not just with terrorism.... It plays in the media overseas big-time. There is a keen interest abroad in the welfare of Muslims in this country, and the treatment of Muslim charities is seen as evidence that the U.S. government is against Islam."⁵⁴⁹

Many donors told the ACLU that because of fear of government reprisal for their donations to legitimate U.S.-based charities, they now make charitable donations in cash, a change from their previous practice of giving via check or credit card.

According to the regional director of the American-Arab Anti-Discrimination Committee (ADC) of Michigan, "Our American goodwill is the best ambassador of America. These cases set back the effort to counter terrorism and promote democracy and promote goodwill toward America. It tarnishes our image abroad. It goes directly to the hearts and minds of people across the globe—these selective

prosecutions portray the wrong image to the people who depend on this goodwill."⁵⁵⁰ In testimony before the Senate Judiciary Committee, executive director of the Muslim Public Affairs Council (MPAC) Salam al-Marayati similarly said, "In an ideal setting, American Muslim charities serve a national security interest by promoting a positive image of America throughout the Muslim world. Unfortunately, the view that American Muslims are a harassed or persecuted religious minority is gaining ground overseas partially because of the blockage of the Muslim charities."⁵⁵¹

c. Proportionate Rise in Cash Donations

Zakat is in hiding now.

—Salma H., Dearborn Heights, Michigan⁵⁵²

The ACLU documented a significant rise in cash donations by Muslim donors. Because of fear of the consequences of donating to legal Muslim charities, many Muslims whose charitable giving has not been completely chilled said they now make donations exclusively in cash to mosques or their family members, in order to preserve their anonymity and protect themselves from reprisal. In numerous cases, the ACLU observed that the climate of fear has prompted some Muslim donors to make common changes to their charitable giving. To avoid the attention of law enforcement authorities, many donors are giving in cash rather than by check or credit card, or giving anonymously rather than in name, reducing individual donations rather than giving in larger amounts, dividing charitable donations among numerous organizations rather than a select few, or writing checks to their mosque instead of directly to the charities of their choosing. Some have set up their own foundations, to avoid having to pay Zakat through a Muslim charity. Many reported that to avoid allegations of guilt by association with a Muslim charity, they simply carry cash abroad themselves or give money to

friends or family traveling overseas, to distribute among family members and other needy people in their countries of origin.

Many donors told the ACLU that because of fear of government reprisal for their donations to legitimate U.S.-based charities, they now make charitable donations in cash, a change from their previous practice of giving via check or credit card. Following is a sampling of American Muslim donors' explanation of their preference to give using cash rather than check or credit card:

- "Sometimes I put cash in an envelope anonymously at the mosque, so I can fulfill Zakat.... I wish I could just write a check or withdraw money each month in the wide open."⁵⁵³
- "I am scared to put my name on anything. Instead, I give cash at the mosque, because I don't want to be harassed by the government.... Zakat is in hiding now."⁵⁵⁴
- "We pay in cash instead because we don't know what will come later, even though our intention is to donate to help people around the world. Most of the time, we give cash because we don't want to put ourselves at risk.... It is a scary time to put your name on [an organization's donor] list."⁵⁵⁵
- "We give cash more readily than a tax-identified donation, to have that cover of anonymity, to not have so much exposure to inquiries by the government."⁵⁵⁶
- "The basic change is that I prefer giving cash nowadays. Before, I gave by credit card or checks. Even in the donation to the mosques—just a basic donation—a lot of people prefer to give cash. This is something that has changed."⁵⁵⁷
- "In the [charitable] fundraising that I have done I have seen more cash coming in. It also

has affected me personally, the amount and how I send the money. Nowadays, besides our required donation to the masjid [mosque], the only way I can give Zakat is to send cash in small amounts with friends or families traveling home—only \$400, \$500. I used to send Zakat through a monthly deduction out of my credit card account, but now I give cash."⁵⁵⁸

"Sometimes I put cash in an envelope anonymously at the mosque, so I can fulfill Zakat. I wish I could just write a check or withdraw money each month in the wide open."

Mosque leaders confirmed that Muslim donors are increasingly making their donations anonymously and in cash. The president of a Detroit mosque told the ACLU, "We have seen the cash percentage of donations to the mosque and to charitable causes have gone up, and checks have gone down."⁵⁵⁹ He also noted, "Instead of giving checks to legal organizations like Islamic Relief or LIFE to support people in Gaza or Iraq, people at fundraisers want to write checks to the mosque and then have the mosque send the money."⁵⁶⁰ The president of a Texas mosque similarly told the ACLU, "When I was president of the mosque, I could see after the HLF case the donations coming by check were reduced, and instead it was cash.... We would prefer to go through proper channels, through charitable organizations rather than friends going overseas."⁵⁶¹

A number of American Muslims who have volunteered as fundraisers for Muslim charities, mosques, and other humanitarian relief efforts reported that they have observed a marked increase in cash donations from Muslim donors. One Muslim man who has volunteered as a fundraiser for charity told the ACLU, "When I was traveling around the country fundraising for charity I

saw that people want to give cash rather than by credit card or check, in order to avoid facing problems. People are scared to give by check; they worry about how to have the money not be traced.”⁵⁶²

Muslim donors and Muslim community leaders pointed out that this consequence of the government’s terrorism financing policies actually complicates efforts to track flows of funds to suspected terrorists. One American Muslim told us, “Before, people gave transparently to established charity organizations that were possible to regulate and control—this is a better solution. Now, cash is being dispersed to individuals here and there, and people’s family members decide [how to dispense the money].”⁵⁶³ Another Muslim donor observed, “Now the government has a problem that people are giving in cash, and they cannot follow a money trail. They are creating a danger for all of us, because they will not find the people doing wrong.”⁵⁶⁴

Islamic banking and finance expert Ibrahim Warde told the ACLU that terrorism financing measures are driving donations into hiding, undermining the government’s goal of tracking flows of funds. Warde said,

On the global level, most of these terrorist financing measures are so heavy-handed that they have driven a lot of the money underground and undermined efforts to figure out where the money goes, when it has to do with real terrorism. It has made the task of figuring out flows to the real terrorists much more difficult.... In terms of being able to trace the money, it does complicate the task. Those government agencies that are trying to figure out where the money is going, since most of the money is going through cash or complicated channels, it makes it more difficult.... [T]here would be no way to verify that the money has gone to the intended beneficiaries. It muddies the waters.⁵⁶⁵

Warde wrote of the global impact of U.S. terrorism financing policies in *The Price of Fear: The Truth Behind the Financial War on Terror*, “Reforming the Islamic charities system was long overdue, yet post-September 11 policies proved mostly counterproductive: they weakened mainstream, ‘controllable’ charities, while building up informal, unchecked, and potentially dangerous charitable and donor networks.”⁵⁶⁶

d. Chilling Effect on Overseas Humanitarian Relief Efforts

I have done quite a lot of humanitarian relief work in refugee camps in Afghanistan and Pakistan. I was part of a joint project that established an orphanage for 55 Afghan refugee orphans in Peshawar [Pakistan]. I did fundraisers in mosques and now I am not able to raise that much—those funds are dwindling, and we collect one sixth of the amount we used to fund-raise. People are scared to give for overseas assistance because of the clamping down on charities. So now we are closing that orphanage.

—Malika B., humanitarian relief worker, Richardson, TX⁵⁶⁷

The overbroad and vague material support laws and the climate of fear created by terrorism financing policies have impacted humanitarian work overseas and cost lives. U.S. policies and practices discourage and undermine the vital humanitarian work of humanitarian and philanthropic organizations. Not only do these policies affect those who relied on aid—including food, shelter, medical care, and education—from humanitarian and philanthropic organizations, but these policies also undermine the U.S. government’s efforts to counter terrorism by making it more difficult for U.S. charities to operate in parts of the world where their good works could be most effective in winning the battle of hearts and minds.

Designated terrorist groups and organizations are the de facto government and distributors of aid in many war-torn areas. In civil war and disaster situations around the world, armed and rebel groups and designated terrorist organizations control territory in conflict areas and other territories in severe humanitarian crisis. For example, designated terrorist organizations control territory in north and east Sri Lanka, northern Iraq, western Pakistan, Somalia, southern Lebanon, parts of the Occupied Palestinian Territories, and south and east Colombia, to mention just a few examples.⁵⁶⁸ The ambiguities of the material support laws and policies create risks for humanitarian aid groups seeking to provide aid to needy civilians in these areas. According to terrorism financing policy expert Ibrahim Warde, “This policy of designating groups and then trying to find a six degrees of separation logic [of guilt by association], it has a chilling effect because throughout the Islamic world you can always be linked to some designated group. It complicates the entire task of charity and philanthropy worldwide.”⁵⁶⁹ Warde offered the following example: “Considering that Hamas controls the government all over Gaza, it means that any group doing anything in Gaza could be legitimately linked to Hamas, so for any charity, not just Islamic charities, you can’t do anything in Gaza without some involvement with Hamas on some level. Almost by definition if you are trying to donate money to relieve problems on the Gaza Strip you can be accused of funding terrorism.”⁵⁷⁰ In fact, the material support provisions are so broad that, in theory, even the International Committee of the Red Cross could be prosecuted under the material support law for the aid it provides in Gaza and other hotspots.

Terrorism financing policies have a documented chilling effect on overseas humanitarian relief efforts.⁵⁷¹ Numerous humanitarian and philanthropic organizations have sought reform of laws and policies that undermine their work. For instance, in a 2009 friend-of-the-court brief filed in

an ACLU case challenging the seizure of the assets of KindHearts for Charitable Humanitarian Development, several humanitarian and philanthropic organizations, including Grantmakers Without Borders, OMB Watch, and Grassroots International, argued that “these actions and policies have created a climate of fear and intimidation among non-profit organizations, discouraging them from doing their critical humanitarian work—particularly in conflict-torn regions that are most in need—for fear of being arbitrarily subjected to these actions and policies themselves.... In effect, the government’s actions and policies are counterproductive to its efforts to counter terrorism because they discourage and undermine the vital work of [non-profit organizations].”⁵⁷² In 2006, a group of humanitarian organizations, including Oxfam, Operation USA, Middle East Children’s Alliance, and the Unitarian Universalist Service Committee, filed a friend-of-the-court brief asking a federal court to narrow the material support laws because of the chilling effect on their relief work, arguing

“These actions and policies have created a climate of fear and intimidation among non-profit organizations, discouraging them from doing their critical humanitarian work—particularly in conflict-torn regions that are most in need—for fear of being arbitrarily subjected to these actions and policies themselves. In effect, the government’s actions and policies are counterproductive to its efforts to counter terrorism because they discourage and undermine the vital work of non-profit organizations.”



LIFE for Relief and Development, a Michigan-based Muslim charity that is known as the largest American Muslim charity currently in operation, provided emergency relief aid to victims of the November 2007 cyclone in Bangladesh. The cyclone killed over 3,000 people and affected over 3 million according to UNICEF. (LIFE for Relief and Development)

that the laws seriously jeopardize their capacity to serve civilian populations in conflict zones.⁵⁷³

Terrorism financing policies have chilled humanitarian relief in a number of conflict situations and natural disasters, including post-tsunami relief in Sri Lanka, earthquake relief in Pakistan, humanitarian aid in Gaza, and humanitarian aid to Lebanon during the 2006 Israel-Lebanon conflict. For example, the executive director of KinderUSA, which provides relief aid in Gaza, told the ACLU, “I think there are many U.S.-based charities—not just Muslim charities—that have stopped work in Gaza, because they are fearful of running afoul of the law; they can’t take the risk.”⁵⁷⁴

In a particularly stark example, the material support laws imposed limits on disaster relief in areas of Sri Lanka devastated by the 2004 tsunami, because these laws arguably barred provision of water purification systems, toilets, tents, and other such goods which are not medicine but nonetheless serve a critical medical function. In testimony before Congress in 2005, ACLU of Southern California staff attorney Ahilan T. Arulanantham gave a first-hand account of the difficulties he experienced while providing humanitarian aid to victims of the tsunami in Sri Lanka.⁵⁷⁵ At the time of the tsunami approximately one-fifth of Sri Lanka was controlled by the Liberation Tigers of Tamil Eelam (LTTE), an armed group fighting against the Sri

Lankan government. The U.S. government designated the LTTE as an FTO, but for the 500,000 people living within its territory, the LTTE operates as an authoritarian military government. As a result, providing humanitarian aid to needy people in this part of Sri Lanka almost inevitably requires dealing directly with institutions the LTTE controls. And because there is no humanitarian exemption from material support laws (only the provision of medicine and religious materials are exempted), aid workers in conflict zones like Sri Lanka are at risk of prosecution by the U.S. government. Arulanandham explained the chilling effect of these laws:

I have spoken personally with doctors, teachers, and others who want to work with people desperately needing their help in Sri Lanka, but fear liability under the “expert advice,” “training,” and “personnel” provisions of the law. I also know people who feared to send funds for urgent humanitarian needs, including clothing, tents, and even books, because they thought that doing so might violate the material support laws. I have also consulted with organizations, in my capacity as an ACLU attorney, that seek to send money for humanitarian assistance to areas controlled by designated groups. I have heard those organizations express grave concerns about continuing their work for precisely these reasons. Unfortunately, the fears of these organizations are well-justified. Our Department of Justice has argued that doctors seeking to work in areas under LTTE control are not entitled to an injunction against prosecution under the material support laws, and it has even succeeded in winning deportation orders under the immigration law’s definition of material support, for merely giving food and shelter to people who belong to a “terrorist organization” even if that group is not designated.⁵⁷⁶

The material support laws have also imposed limits on conflict resolution programs. For example, the Humanitarian Law Project has been blocked

from providing human rights and conflict resolution training to the LTTE and the Kurdistan Workers’ Party (PKK) because the Department of Justice argues this is illegal material support of terrorism.⁵⁷⁷

Terrorism financing policies have chilled humanitarian relief in a number of conflict situations and natural disasters.

U.S. terrorism financing laws are counterproductive to the U.S. government’s efforts to fight terrorism by making it more difficult for U.S. charities to operate in parts of the world where their good works could be most effective in winning the battle of hearts and minds. A former Department of Treasury official who asked not to be named told the ACLU, “By making people paranoid about giving, we are not making the problem [of terrorism] any better. This is essentially the rub. [Going after terrorism financing] is an important thing to do, but at the same time we know that there has been a drop-off in giving, and that’s exactly the wrong way to do this. We want more money going to the right places.”⁵⁷⁸

Experts suggest that humanitarian assistance more effectively counters terrorism by addressing the root causes of terrorism.⁵⁷⁹ Humanitarian organizations’ relief efforts address the root causes of terrorism, by providing health care and education services, fostering sustainable community development, and encouraging democratic institutions. These humanitarian relief projects contribute to the global effort to counter terrorism, particularly in regions devastated by armed conflict, natural disasters, and severe poverty. Some programs of humanitarian organizations directly prevent the growth and spread of terrorist organizations and activities by promoting nonviolent conflict resolution and fostering opportunities for democratic

participation. Noting that, “when people lose hope, when societies break down, when countries fragment, the breeding grounds for terrorism are created,” the 9/11 Commission staff recommended that “a comprehensive U.S. strategy to counter terrorism should include economic policies that encourage development, more open societies, and opportunities for people to improve the lives of their families and to enhance prospects for their children’s future.”⁵⁸⁰

For example, in Somalia, the consequences of the Treasury Department’s designation of two organizations raise concerns that terrorism financing policies may undermine global security. The closure of Somali remittance agency Al-Barakaat was akin to closing the central bank of Somalia—even the United Nations used Al-Barakaat to transmit money for its relief operations in the country—and many impoverished Somali families had relied on remittances transmitted through Al-Barakaat for

their survival.⁵⁸¹ Before its closure, Al-Barakaat was Somalia’s largest employer and ran the country’s only water-purification plant. In Somalia, Al-Barakaat’s closure led to the loss of 700 jobs and the discontinuation of a cholera program.⁵⁸² Later, the U.S. designation of the Muslim charity Al-Haramain Islamic Foundation’s offices worldwide led to the closure of orphanages throughout Somalia; over 3,000 orphans were turned out into the street and another 700 jobs were lost as a result.⁵⁸³ These consequences are problematic to the rule of law and arguably promote a breeding ground for violence.⁵⁸⁴ And yet in the case of Al-Barakaat, any measurable gain in security was illusory: as discussed in section IV of this report, the 9/11 Commission staff found that the U.S. had “no direct evidence at all of any real link between al-Barakaat and terrorism of any type,” and the freezing of its assets was an embarrassment for the Treasury Department when foreign government and court review found no evidence of terrorism financing.⁵⁸⁵

XI.

International Human Rights and Constitutional Legal Standards

When the government abandons law to protect us from terrorists then we are under even greater danger. What are being abandoned are human achievements that were fought for many years ago—the common law, the Magna Carta, the Bill of Rights. These were achievements that were made over centuries, and to say we can get rid of them because of the war on terror suggests that we've already lost. Shutting down a charity without showing any evidence, in exchange for these achievements, shows such a total disrespect of our Constitution, of our country, of liberty fought for over hundreds of years.

—Former Assistant Secretary of the Treasury, Paul Craig Roberts⁵⁸⁶

Religious freedom and freedom of association are enshrined as fundamental rights in international human rights law and under the U.S. Constitution. As a state party to the International Covenant on Civil and Political Rights and the International Convention on the Elimination of All Forms of Racial Discrimination, the United States must respect freedom of religious belief, practice, observance and worship; must protect freedom of association; and must guarantee freedom of religion and association without distinction as to race, color, or national or ethnic origin.

Freedom of religion and association are fundamental rights protected by the First Amendment of the U.S. Constitution. One Muslim community leader noted, “This country was built on certain principles enshrined in the Constitution—principles of

tolerance, secularism, democratic norms, providing freedom of speech and religion. When these basic freedoms are curbed, we are doing a great disservice to the mandate on which this country was built.”⁵⁸⁷ A U.S.-born Muslim explained,

The freedom of religion, that's why the Puritans came here to settle in the U.S. I believe in the Constitution that was set forth by our forefathers, who were so enlightened and had such broad minds to set forth the most basic rights in our Constitution. But for our government to go directly against that, against our right to practice our religion—because a fundamental tenet of our religion is being infringed upon—that's not the right thing to do.... Religious persecution was the first and foremost reason why people came to America. To restrict religious freedom is to erode a fundamental pillar of this country.⁵⁸⁸

a. Religious Freedom

Freedom of religion and expression lead to a strong and vibrant civil society that only strengthens the state.... An enduring commitment to the rule of law is the only way to achieve the security that comes from justice for all people. Robust minority rights let societies benefit from the full measure of contributions from all citizens.

—President Barack Obama, April 6, 2009⁵⁸⁹

The limitation of American Muslims' charitable donations in accordance with their religious beliefs is inconsistent with American values and violates American Muslims' religious freedom as enshrined in international human rights law and undermines American Muslims' right to free and full exercise of religion under the U.S. Constitution.

As a state party to the International Covenant on Civil and Political Rights (ICCPR), the United States must ensure the right to freedom of thought,

conscience, and religion, which includes, “freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching,” and requires that, “[n]o one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.”⁵⁹⁰ Article 18 of the ICCPR, which the United States ratified in 1992, protects not only the right to adhere to religious beliefs of one’s choice, but also the right to express and practice that belief in a public manner. This includes communication of religious beliefs (also protected under Article 19, guaranteeing freedom of expression) and gathering together with co-believers (also protected under Article 21, guaranteeing freedom of peaceful assembly).⁵⁹¹

Article 18 of the Universal Declaration of Human Rights (UDHR) also enshrines the right to freedom of religion.⁵⁹² Similarly, Article 12(1) of the American Convention on Human Rights, which the United States signed in 1977 but has not ratified, states, “Everyone has the right to freedom of conscience and of religion. This right includes freedom to maintain or to change one’s religion or beliefs, and freedom to profess or disseminate one’s religion or beliefs, either individually or together with others, in public or in private.”⁵⁹³

The ICCPR distinguishes the freedom of thought, conscience, or religion from the freedom to manifest religion or belief. The freedom of thought, conscience, and religion is an unconditional (non-derogable) right that cannot be limited, even in time of public emergency.⁵⁹⁴ In contrast, the freedom to manifest religion or belief is subject to some limitations (derogable). Under Article 18(3), limitations to manifesting one’s belief may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.⁵⁹⁵

The United Nations (UN) Human Rights Committee, which monitors compliance with the ICCPR and authoritatively interprets the treaty, has made clear that the right to manifest religion or belief may be limited in only very strict circumstances, to protect public safety, order, health or morals, or the fundamental rights and freedoms of others, and “restrictions are not allowed on grounds not specified [in Article 18(3)], even if they would be allowed as restrictions to other rights protected in the Covenant, such as national security.”⁵⁹⁶ Further, limitations on the right to manifest religion or belief must not be applied in a manner that would vitiate the rights to religious freedom guaranteed in Article 18. In addition, these limitations may not be applied in a discriminatory manner or for discriminatory reasons.

Faith-based charitable giving is protected under these international human rights legal provisions. The UN General Assembly’s Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, makes clear that the right to freedom of thought, conscience, religion or belief includes the right to establish and maintain charitable institutions and to solicit and receive financial contributions.⁵⁹⁷ The UN Human Rights Committee, which monitors compliance with the ICCPR, clarified that acts that give expression to belief are broadly protected as manifestations of religion or belief: “The freedom to manifest religion or belief in worship, observance, practice and teaching encompasses a broad range of acts. The concept of worship extends to ritual and ceremonial acts giving direct expression to belief, as well as various practices integral to such acts.... [T]he practice and teaching of religion or belief includes acts integral to the conduct by religious groups of their basic affairs.”⁵⁹⁸

The UN Special Rapporteur on Freedom of Religion and Belief, Dr. Asma Jahangir, the independent human rights expert charged with investigating, monitoring and recommending reforms regarding

religious freedom, stated that countries must “ensure that, in accordance with appropriate national legislation and in conformity with international human rights law, the freedom for all persons and members of groups to establish and maintain religious, charitable or humanitarian institutions is fully respected and protected.”⁵⁹⁹

Just as religious freedom is a fundamental human right, religious freedom is one of the core rights protected by the U.S. Constitution. Religious freedom is guaranteed by the First Amendment’s Free Exercise and Establishment clauses. The First Amendment of the Constitution provides that “Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof...” It encompasses not only the right to religious belief, but also the right to express and to manifest religious beliefs.

One of the first great Supreme Court freedom of religion cases was decided in the middle of World War II, in *West Virginia v. Barnette*. In one of the Court’s most frequently quoted passages it said: “If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein. If there are any circumstances which permit an exception, they do not now occur to us.”⁶⁰⁰ While freedom of religious conduct is not absolute, in *Cantwell v. Connecticut*, the Supreme Court held that a law restricting a religious group from soliciting funds violated the free exercise clause of the First Amendment, stating, “[i]n every case the power to regulate must be so exercised as not, in attaining a permissible end, unduly to infringe the protected freedom.”⁶⁰¹

In addition to fundamental constitutional protections, the Religious Freedom Restoration Act (RFRA) imposes an exacting standard of review on federal government action that substantially

burdens religious exercise.⁶⁰² The Act provides that “Government shall not substantially burden a person’s exercise of religion even if the burden results from a rule of general applicability.”⁶⁰³ The only exception to this ban on the substantial burden of religion is where the government “demonstrates that application of the burden to the person (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest.”⁶⁰⁴

Furthermore, the International Religious Freedom Act, passed by Congress in 1998, recognized that the right to religious freedom is a universal human right. The Congressional findings acknowledge that the right to freedom of religion “undergirds the very origin and existence of the United States,” and states,

Freedom of religious belief and practice is a universal human right and fundamental freedom articulated in numerous international instruments, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Helsinki Accords, the Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief, the United Nations Charter, and the European Convention for the Protection of Human Rights and Fundamental Freedom.... Governments have the responsibility to protect the fundamental rights of their citizens and to pursue justice for all. Religious freedom is a fundamental right of every individual, regardless of race, sex, country, creed, or nationality, and should never be arbitrarily abridged by any government.⁶⁰⁵

b. Non-Discrimination

Enforcement actions against U.S.-based charities disproportionately impact Muslims and violate non-discrimination principles enshrined in international law. In international human rights law, freedom from discrimination on the basis of religion and race is a non-derogable right which cannot be limited, even in times of public emergency. Because U.S. terrorism financing policies and enforcement actions have a discriminatory effect on Muslims, these policies violate basic international human rights protections against religion-based discrimination. Under the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), which the United States ratified in 1994, the United States must guarantee that individuals are not discriminated against on the basis of race, color, or national or ethnic origin, in their right to freedom of thought, conscience and religion.⁶⁰⁶ CERD prohibits any distinction, exclusion, restriction or preference based on race, color, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.⁶⁰⁷

In its General Recommendation 31, the Committee on the Elimination of Racial Discrimination (CERD Committee), the UN body empowered to interpret the CERD treaty, highlighted “[t]he potential indirect discriminatory effects of certain domestic legislation, particularly legislation on terrorism...as well as legislation that has the effect of penalizing without legitimate grounds certain groups or membership of certain communities.”⁶⁰⁸ The CERD Committee recommended, “States should seek to eliminate the discriminatory effects of such legislation and in any case to respect the principle of proportionality in its application to persons belonging to...groups” such as racial or ethnic groups, immigrants, and “other vulnerable groups which are

particularly exposed to exclusion, marginalization and non-integration in society.”

The ICCPR also protects against discrimination on the basis of religion. Article 2(1) of the ICCPR specifically requires countries to respect and ensure rights to all individuals “without distinction of any kind” including religious, political, or other opinion. Article 26 states “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law.” The prohibition on religious and racial discrimination is absolute, even in times of national emergency (Article 4). Article 26 places an obligation on countries to ensure that, “the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as...religion.” Article 26 prohibits discriminatory laws and has been interpreted to apply to “any field regulated and protected by public authorities.”

Articles 2 and 7 of the UDHR also enshrine the principle of non-discrimination, which is a basic principle of international human rights law: “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

The UN General Assembly issued a Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, calling on all countries to “take effective measures to prevent and eliminate discrimination on the grounds of religion or belief...in all fields of civil, economic, political, social and cultural life” and to “enact or rescind legislation where necessary to prohibit any such discrimination.”⁶⁰⁹ The Declaration also contains strong language prohibiting religious discrimination as an “affront to human dignity” and a violation of human rights and fundamental freedoms. The Declaration defines religious discrimination as “any distinction, exclusion, restriction

or preference based on religion or belief and having as its purpose or as its effect nullification or impairment of the recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal basis.”

In its Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, the UN General Assembly reiterated the principle of freedom of religion and freedom from religious discrimination, declaring that “Persons belonging to national or ethnic, religious and linguistic minorities...have the right...to profess and practice their own religion..., in private and in public, freely and without interference or any form of discrimination.”⁶¹⁰ The Declaration states that countries must “take measures to create favorable conditions to enable persons belonging to [religious] minorities to express their characteristics and to develop their...religion, traditions and customs, except where specific practices are in violation of national law and contrary to international standards.”

c. Freedom of Association and Assembly

Freedom of association is protected by international human rights law and the U.S. Constitution. The UDHR enshrines the right to freedom of association, stating, “Everyone has the right to freedom of peaceful assembly and association” (Article 20(1)).⁶¹¹ The ICCPR also requires parties to the treaty to protect the right to freedom of association, stating, “The right of peaceful assembly shall be recognized” (Article 21) and “Everyone shall have the right to freedom of association with others” (Article 22(1)).⁶¹² The ICCPR allows for restrictions on the rights to freedom of association and assembly that are “prescribed by law” and “which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public

health or morals or the protection of the rights and freedoms of others.”⁶¹³

Article 16(1) of the American Convention on Human Rights protects the right to associate for religious or other purposes, stating, “Everyone has the right to associate freely for ideological, religious, political, economic, labor, social, cultural, sports, or other purposes.”⁶¹⁴ The Convention also states that, “The exercise of this right shall be subject only to such restrictions established by law as may be necessary in a democratic society, in the interest of national security, public safety or public order, or to protect public health or morals or the rights and freedoms of others.”⁶¹⁵ The American Declaration of the Rights and Duties of Man, which the United States is bound to as a member of the Organization of American States, similarly provides for the right of association, stating in Article XXII, “Every person has the right to associate with others to promote, exercise and protect his legitimate interests of a political, economic, religious, social, cultural, professional, labor union or other nature.”⁶¹⁶

In its Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (known as the “Declaration of the Rights of Human Rights Defenders”), the General Assembly provides in Article 5 that, “For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels: To meet or assemble peacefully; To form, join and participate in non-governmental organizations, associations or groups; [and] To communicate with non-governmental or intergovernmental organizations.”⁶¹⁷

International law recognizes that the right to freedom of religion requires the right to freedom of association to be fully realized. In its General Comment 23 on the Rights of Minorities, the UN Human Rights Committee, which monitors compliance

with the ICCPR, stated that individuals belonging to minorities have the right to freedom of association and assembly just as “any other individual in the territory of the State party,” and “should not be denied the right, in community with members of their group...to practice their religion.”⁶¹⁸ The UN Special Rapporteur on Freedom of Religion and Belief, Dr. Asma Jahangir, stated in her comments to the United Nations General Assembly in 2006, “the right to freedom of religion or belief needs other human rights to be fully exercised, including the right to freedom of association or the right to freedom of expression.”⁶¹⁹

Freedom of association is a fundamental right protected by the First Amendment of the U.S. Constitution. Although association is not included among those freedoms enumerated in the First Amendment, the Supreme Court has expressly declared that freedom of association is an inseparable aspect of the right to speech and assembly protected by the First Amendment.⁶²⁰ In its First Amendment jurisprudence, the Supreme Court has generally protected the right to associate for purposes of engaging in expressive First Amendment-protected activities such as the exercise of religion.⁶²¹

In *Roberts v. United States Jaycees*, the Supreme Court stated, “we have long understood as implicit in the right to engage in activities protected by the First Amendment a corresponding right to associate with others in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends.”⁶²² The Supreme Court further stated that an “individual’s freedom to speak, to worship... could not be vigorously protected from interference by the state unless a correlative freedom to engage in a group effort toward those ends were not also guaranteed.”⁶²³ In *NAACP v. Alabama ex rel. Patterson*, the Supreme Court held that a court order compelling the NAACP to disclose records containing the names and addresses of its members violated the organization’s freedom of association.⁶²⁴ The Court recognized that freedom to associate for

the advancement of beliefs and ideas is integral and inseparable from freedom of speech.

Furthermore, donation of money is a form of speech protected by the First Amendment, and the limitation of charitable donations raises serious concerns about the speech rights of Muslim donors.⁶²⁵ Although monetary donations do not receive the full protection that political speech receives, heightened scrutiny of limitations still applies.⁶²⁶

d. International Law on Counterterrorism Measures

The manner in which the government has designated Muslim charities and seized their assets contravenes international law mandating that counterterrorism measures comply with human rights principles. Numerous UN resolutions declare that counterterrorism measures must comply with human rights obligations. These resolutions do not have the binding character of ratified treaties, but are persuasive legal documents that repeatedly reiterate this principle. In Security Council Resolution 1456 (2003), the Security Council declared that “States must ensure that any measure taken to combat terrorism comply with all their obligations under international law, and should adopt such measures in accordance with international law, in particular international human rights, refugee, and humanitarian law.”⁶²⁷ General Assembly Resolutions 58/187 (2004), 60/158 (2006), and 62/159 (2007) on the “Protection of Human Rights and Fundamental Freedoms while Countering Terrorism”;⁶²⁸ Commission on Human Rights Resolutions 2003/68, 2004/87, and 2005/80 (“Protection of Human Rights and Fundamental Freedoms while Countering Terrorism”);⁶²⁹ Commission on Human Rights Resolution 2003/37 (“Human Rights and Terrorism”);⁶³⁰ and UN Security Council Resolution 1566 (“Threats to International Peace and Security Caused by Terrorist Acts”)⁶³¹ reiterate this principle.

In its Statement on Racial Discrimination and Measures to Combat Terrorism (2002), the CERD Committee, charged with interpreting CERD, recognized threats to religious freedom and possible large-scale racial discrimination post-9/11, and stated that, “[M]easures to combat terrorism must be in accordance with the Charter of the United Nations and...they are only legitimate if they respect the fundamental principles and the universally recognized standards of international law, in particular, international human rights law and international humanitarian law.”⁶³² Further, the CERD Committee announced it “Demands that States and international organizations ensure that measures taken in the struggle against terrorism do not discriminate in purpose or effect on grounds of race, colour, descent, or national or ethnic origin.”⁶³³

The CERD Committee also issued a General Recommendation on Discrimination against Non-Citizens, according to which any measures taken in the fight against terrorism must “not discriminate, in purpose or effect, on the grounds of race, colour, descent, or national or ethnic origin” and countries must ensure “that non-citizens are not subjected to racial or ethnic profiling or stereotyping.”⁶³⁴

Following his last official mission to review U.S. counterterrorism practices, the UN Special Rapporteur on Human Rights while Countering Terrorism condemned U.S. counterterrorism practices of profiling based on religion: “The Special Rapporteur recommends that all States, including the United States, do not...act in a manner which might be seen as advocating the use of race and religion for the identification of persons as terrorists.”⁶³⁵ The UN Special Rapporteur also condemned the application of material support laws to donors of Muslim charities, and expressed concern about the material support laws and in particular the USA PATRIOT Act of 2001 provision expanding forms of conduct that can amount to material support of terrorism. The UN Special Rapporteur found that the provision,

...is expressed in terms that are not exclusive and thereby renders the expression “material support” too vague. This lack of precision is particularly problematic for communities, including Muslim ones, which are unable to determine whether the provision of funds by them to what they may believe are charities or humanitarian organizations abroad will be treated as material support to a terrorist entity. The Special Rapporteur observes that any determination of proscribed status of organizations, including purported charities, should be public, transparent, non-retroactive and reasoned.⁶³⁶

The Special Rapporteur specifically recommended that the U.S. reform its material support statutes in order to bring the laws into compliance with international standards. He “urge[d] the Government to restrict definitions of ‘international terrorism,’ ‘domestic terrorism’ and ‘material support to terrorist organizations’ in a way that is precise and restricted to the type of conduct identified by the Security Council as conduct to be suppressed in the fight against terrorism.”⁶³⁷

After a three-year investigation of the worldwide impact of counterterrorism laws in 40 countries, including 16 hearings, an independent panel of eminent judges and lawyers convened by the International Commission of Jurists (ICJ) released a report of its findings. The ICJ concluded, “Valid arguments can be made for pursuing such offences [as providing material support to terrorists], but examples of their chilling effect and of serious abuse were provided. States have to ensure appropriate safeguards against such human rights violations, and must take precautions not to destroy the lives and reputations of individuals who may come to be publicly portrayed as dangerous terrorist associates, despite having no actual involvement in terrorist activities.”⁶³⁸

XII.

Acknowledgments

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XIII.

Endnotes

- 1 White House Office of the Press Secretary, *President Freezes Terrorists' Assets, Remarks by the President*, Sept. 24, 2001, available at <http://georgewbush-whitehouse.archives.gov/news/releases/2001/09/20010924-4.html>.
- 2 Kevin McCoy, *Feds Probe Whether Islamic Charities Involved*, USA TODAY, Sept. 20, 2001.
- 3 Government Accountability Office, *Terrorist Financing: Better Strategic Planning Needed to Coordinate U.S. Efforts to Deliver Counter-Terrorism Financing Training and Technical Assistance Abroad 24-29* (Oct. 24, 2005), available at <http://www.gao.gov/new.items/d0619.pdf>.
- 4 National Commission on Terrorist Attacks upon the United States, *Monograph on Terrorist Financing: Staff Report to the Commission 79* (Aug. 21, 2004), available at http://govinfo.library.unt.edu/911/staff_statements/911_TerrFin_Monograph.pdf.
- 5 See *Humanitarian Law Project et al. v. Gonzales*, 380 F. Supp. 2d 1134, 1142-48; *Humanitarian Law Project v. Ashcroft*, 352 F.3d 382, 397 (9th Cir. 2003), vacated, 393 F.3d 902 (9th Cir. 2004) ["At oral argument, the government told us that it could convict a person under § 2339B if he or she donates support to a designated organization even if he or she does not know the organization is so designated.... That is, according to the government, it can convict an individual who gives money to a designated organization that solicits money at their doorstep so long as the organization identifies itself by name. It is no defense, according to the government, that the organization describes to the donor only its humanitarian work to provide basic services to support victims displaced and orphaned by conflict, or to defend the cultural and linguistic rights of ethnic minorities. And, the government further contends, it is no defense that a donor contributes money solely to support the lawful, humanitarian purposes of a designated organization."]. In a series of Cold War cases the Supreme Court has held that specific intent to accomplish the criminal or violent aims of an organization is required to punish mere membership in that organization. See, e.g., *Scales v. United States*, 367 U.S. 203 (1961); *Noto v. United States*, 367 U.S. 290 (1961). The Supreme Court has not yet directly addressed this in the funding context, but some lower courts have upheld the government's argument that specific intent is not required for liability to attach under 18 U.S.C. § 2339B (explained further in section III of this report). See, e.g., *Humanitarian Law Project et al. v. Mukasey*, 509 F.3d 1122, 1132-33 (9th Cir. 2007); *Holy Land Found. for Relief and Dev. v. Ashcroft*, 333 F.3d 156 (D.C. Cir. 2003). But see *United States v. Al-Arian*, 308 F. Supp. 2d 1322, 1339, reconsideration denied, 329 F. Supp. 2d 1294 (M.D. Fla. 2004) [interpreting "the mens rea required to support a conviction under Section 2339B(a)(1) as requiring the government to prove beyond a reasonable doubt that a defendant knew [had a specific intent] that the support would further the illegal activities of a FTO"].
- 6 See Brief for American Civil Liberties Union as Amicus Curiae Supporting Plaintiffs-Appellees, *Humanitarian Law Project et al. v. Gonzales*, 380 F. Supp. 2d 1134 No. 05-56753, 05-56846 (9th Cir. May 19, 2006), available at http://www.aclu.org/images/general/asset_upload_file394_25628.pdf.
- 7 The only exceptions to the ban on "material support or resources" provision are for medicine and religious materials. 18 U.S.C. § 2339B(j).
- 8 National Commission on Terrorist Attacks upon the United States, *supra* note 4, at 50, 112.
- 9 *Id.* at 79, 111.
- 10 *Id.* at 9.
- 11 ACLU interview with Abu R. (pseudonym used upon request), Richardson, TX, August 3, 2008.
- 12 ACLU interview with Abdullah Mikail MacKay, Dallas, TX, August 3, 2008.
- 13 ACLU interview with Sharif B. (pseudonym used upon request), Richardson, TX, August 2, 2008.
- 14 ACLU interview with Jamal Y. (pseudonym used upon request), Plano, TX, July 31, 2008.
- 15 ACLU interview with Mohammed A. (pseudonym used upon request), Richardson, TX, May 28, 2008.
- 16 ACLU interview with Sharif B. (pseudonym used upon request), Richardson, TX, August 2, 2008.

- 17 ACLU interview with Rabia Said, Richardson, TX, August 3, 2008.
- 18 ACLU interview with Melissa R. (pseudonym used upon request), Richardson, TX, August 6, 2008.
- 19 See, e.g., Anny Bakalian and Mehdi Bozorgmehr, *BACKLASH 9/11: MIDDLE EASTERN AND MUSLIM AMERICANS RESPOND* 163-65, 173-74 (2009).
- 20 ACLU interview with Mohamed Elibiary, Carrollton, TX, May 28, 2008.
- 21 National Commission on Terrorist Attacks upon the United States, *supra* note 4, at 50, 112.
- 22 White House Office of the Press Secretary, Remarks by President Obama to the Turkish Parliament, Apr. 6, 2009, available at http://www.whitehouse.gov/the_press_office/Remarks-By-President-Obama-To-The-Turkish-Parliament/ [hereinafter Remarks to the Turkish Parliament].
- 23 ACLU interview with Abdul C. (pseudonym used upon request), Plano, TX, August 1, 2008.
- 24 T. Jeremy Gunn, *Faith and Freedom: Using the UDHR to Practice What We Preach*, in *HUMAN RIGHTS BEGIN AT HOME* 22 (ACLU, 2008), available at http://www.udhr60.org/faith_freedom.pdf.
- 25 See *Nat'l Council of Resistance of Iran v. Dep't of State*, 251 F.3d 192 (D.C. Cir. 2001).
- 26 The duties and rights of the Board, including its subpoena power, are detailed in The Implementing Recommendations of the 9/11 Commission Act of 2007, Pub. L. No. 110-53, Title VIII, § 801 (2007), available at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_public_laws&docid=f:publ053.110.
- 27 See, e.g., OMB Watch and Grantmakers without Borders, *COLLATERAL DAMAGE: HOW THE WAR ON TERROR HURTS CHARITIES, FOUNDATIONS, AND THE PEOPLE THEY SERVE* 61-66 (2008), available at <http://www.ombwatch.org/files/npadv/PDF/collateraldamage.pdf>; OMB Watch et al., Letter to Secretary of the U.S. Department of Treasury Henry Paulson, Nov. 6, 2006, available at http://www.ombwatch.org/files/npadv/Paulson_letter.pdf.
- 28 See 31 C.F.R. 501 and 597.
- 29 See <http://www.state.gov/g/drl/rls/77771.htm>.
- 30 See *Nat'l Council of Resistance of Iran*, 251 F.3d 192.
- 31 See The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act) of 2001, Pub. L. No. 107-56 § 106, 115 Stat. 272 (2001); 50 U.S.C. § 1702(a)(1)(B).
- 32 ACLU interview with Haneen A. (pseudonym used upon request), Richardson, TX, August 5, 2008.
- 33 ACLU telephone interview with Laila al-Marayati, Los Angeles, CA, October 28, 2008.
- 34 See 18 U.S.C. § 2339A; *Id.* § 2339B (creating criminal liability for material support to designated terrorist organizations); *Id.* § 1182(a)(3)(B)(iv)(VI); *Id.* § 1227(a)(4)(B) (immigration statute authorizing exclusion and deportation of noncitizens who provide material support to designated organizations and certain undesigned organizations); 50 U.S.C. § 1701 (general statute authorizing government to freeze all assets of designated organizations).
- 35 8 U.S.C. § 1182; see, e.g., Marisa Taylor, *US Allies Losing Asylum Bids over Definition of "Terrorist,"* McClatchy, May 2, 2009; Human Rights First, *ABANDONING THE PERSECUTED: VICTIMS OF TERRORISM AND OPPRESSION BARRED FROM ASYLUM* (2006), available at <http://www.humanrightsfirst.info/pdf/06925-asy-abandon-persecuted.pdf>.
- 36 Pub. L. No. 104-132, 110 Stat. 1214 (1996).
- 37 18 U.S.C. § 2339A. Providing material support to terrorists
- (a) Offense. – Whoever provides material support or resources or conceals or disguises the nature, location, source, or ownership of material support or resources, knowing or intending that they are to be used in preparation for, or in carrying out, a violation of section 32, 37, 81, 175, 229, 351, 831, 842(m) or (n), 844(f) or (i), 930(c), 956, 1114, 1116, 1203, 1361, 1362, 1363, 1366, 1751, 1992, 1993, 2155, 2156, 2280, 2281, 2332, 2332a, 2332b, 2332f, or 2340A of this title, section 236 of the Atomic Energy Act of 1954 [42 U.S.C. 2284], or section 46502 or 60123(b) of title 49, or in preparation for, or in carrying out, the concealment of an escape from the commission of any such violation, or attempts or conspires to do such an act, shall be fined under this title, imprisoned not more than 15 years, or both, and, if the death of any person results, shall be imprisoned for any term of years or for life.
- (b) Definition. – In this section, the term “material support or resources” means currency or monetary instruments or financial securities, financial services, lodging, training, expert advice or assistance, safehouses, false documentation or

identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets, except medicine or religious materials.

38 18 U.S.C. § 2339B. Providing material support or resources to designated foreign terrorist organizations

(a) Prohibited activities. –

(1) Unlawful conduct. – Whoever, within the United States or subject to the jurisdiction of the United States, knowingly provides material support or resources to a foreign terrorist organization, or attempts or conspires to do so, shall be fined under this title or imprisoned not more than 15 years, or both, and, if the death of any person results, shall be imprisoned for any term of years or for life. . . .

(g) Definitions. – As used in this section . . .

(4) the term “material support or resources” has the same meaning as in section 2339A; . . .

(6) the term “terrorist organization” means an organization designated as a terrorist organization under section 219 of the Immigration and Nationality Act.

39 6 Stat. 163, § 219, as amended, 8 U.S.C.A. §§ 1101 et seq. As noted, 18 U.S.C. §§ 2339A and 2339B are not the only statutes pertaining to material support. In addition, the criminal liability provisions of the International Emergency Economic Powers Act (IEEPA) permit the designation of “specially designated terrorists” and “specially designated global terrorists” and give the President authority to regulate, prohibit or prevent any form of economic transaction that provides services to benefit terrorists. 50 U.S.C.A. § 1705 (2007).

40 If the Secretary of State designates an organization as an FTO, notice is provided only through an announcement in the Federal Register, and the designated organization then has 30 days to challenge the designation in the U.S. Court of Appeals for the D.C. Circuit. 50 U.S.C. APP.5(B), 22 U.S.C. 2370(A), 22 U.S.C. 6001.

41 See Brief for American Civil Liberties Union as Amicus Curiae Supporting Defendant, *U.S. v. Taleb-Jedi*, 566 F. Supp. 2d 157 (E.D.N.Y. 2008) (No. 06-CR-652, filed Nov. 8, 2007), available at http://www.aclu.org/pdfs/safefree/us_v_talebjed_i_acluamicus.pdf.

42 The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act) of 2001, Pub. L. No. 107-56, §§ 805 and 810, 115 Stat. 272 (2001).

43 18 U.S.C. 2339A(b).

44 After the U.S. Court of Appeals for the Ninth Circuit in the Humanitarian Law Project case struck down certain sections of the criminal material support statute as impermissibly vague, Congress amended the law in December 2004, with the passage of the Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. No. 108-458, § 6603. The amendments somewhat more specifically define “training” as “instruction or teaching designed to impart a specific skill, as opposed to general knowledge.” The amendments also defined “expert advice or assistance” as “advice or assistance derived from scientific, technical or other specialized knowledge.” 18 U.S.C. § 2339A(b)(2-3).

45 Under amendments enacted in the Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. No. 108-458, § 6603, a person violates the material support laws as long as he or she provides the support knowing that the recipient group has been designated as a “terrorist organization” or that the organization has been involved in “terrorist activity.” *Id.* at § 2339B(a)(1).

46 The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act) of 2001, Pub. L. No. 107-56 § 805(a)(2), 115 Stat. 272 (2001); 18 U.S.C. §§ 2339A(b) and 2339B(g)(4).

47 *Id.* § 2339B(a)(1).

48 IRTPA, Pub. L. No. 108-458, 118 Stat. 3638 (2004).

49 In a series of Cold War cases the Supreme Court has held that specific intent to accomplish the criminal or violent aims of an organization is required to punish mere membership in that organization. See, e.g., *Scales v. United States*, 367 U.S. 203 (1961); *Noto v. United States*, 367 U.S. 290 (1961). The Supreme Court has not yet directly addressed this in the funding context, but some lower courts have upheld the government’s argument that specific intent is not required for liability to attach under 18 U.S.C. § 2339B (explained further in section III of this report). See, e.g., *Humanitarian Law Project et al. v. Mukasey*, 509 F.3d 1122, 1132-33 (9th Cir. 2007); *Holy Land Found. for Relief and Dev. v. Ashcroft*, 333 F. 3d 156 (D.C. Cir. 2003). But see *United States v. Al-Arian*, 308 F. Supp. 2d 1322, 1339, reconsideration denied, 329 F. Supp. 2d 1294 (M.D. Fla. 2004) (interpreting “the mens rea required to support a conviction under Section 2339B(a)(1) as requiring the government

to prove beyond a reasonable doubt that a defendant knew (had a specific intent) that the support would further the illegal activities of a FTO”).

50 See *Humanitarian Law Project et al. v. Gonzales*, 380 F. Supp. 2d 1134, 1142-48; *Humanitarian Law Project v. Ashcroft*, 352 F.3d 382, 397 (9th Cir. 2003), *vacated*, 393 F.3d 902 (9th Cir. 2004) (“At oral argument, the government told us that it could convict a person under § 2339B if he or she donates support to a designated organization even if he or she does not know the organization is so designated.... That is, according to the government, it can convict an individual who gives money to a designated organization that solicits money at their doorstep so long as the organization identifies itself by name. It is no defense, according to the government, that the organization describes to the donor only its humanitarian work to provide basic services to support victims displaced and orphaned by conflict, or to defend the cultural and linguistic rights of ethnic minorities. And, the government further contends, it is no defense that a donor contributes money solely to support the lawful, humanitarian purposes of a designated organization.”).

51 See Brief for American Civil Liberties Union as Amicus Curiae Supporting Plaintiffs-Appellees, *Humanitarian Law Project et al. v. Gonzales*, No. 05-56753, 05-56846 (9th Cir. filed May 19, 2006), available at http://www.aclu.org/images/general/asset_upload_file394_25628.pdf.

52 USA PATRIOT Improvement and Reauthorization Act of 2005 (PIRA), Pub. L. No. 109-177 § 104, 120 Stat. 192 (2006).

53 18 U.S.C. 2339B(j).

54 Michael E. Deutsch and Erica Thompson, *Secrets and Lies: The Persecution of Muhammad Salah (Part I)* 37 JOURNAL OF PALESTINE STUDIES 38 (2008); Testimony of Professor David Cole, Georgetown University Law Center, *Aiding Terrorists: An Examination of the Material Support Statute*, Hearing of the U.S. Senate Judiciary Committee, May 5, 2004.

55 Deutsch & Thompson, *supra* note 54, at 38; Testimony of Professor David Cole, *supra* note 54.

56 *United States v. Hammoud*, C.A. No. 03-4253, *aff'd*, 381 F.3d 316 (4th Cir. 2004) (*en banc*), *vacated and remanded*, 125 S. Ct. 1051 (2005) *vacated and remanded*, 405 F.3d 1034 (4th Cir. 2005); see also Testimony of Professor David Cole, *supra* note 54.

57 Maureen O’Hagan, *A Terrorism Case that Went Awry*, SEATTLE TIMES, Nov. 22, 2004.

58 *Foti v. City of Menlo Park*, 146 F.3d 629, 638 (9th Cir. 1998).

59 See Brief for American Civil Liberties Union as Amicus Curiae Supporting Plaintiffs-Appellees, *Humanitarian Law Project et al. v. Gonzales*, No. 05-56753, 05-56846 (9th Cir. 2006), available at http://www.aclu.org/images/general/asset_upload_file394_25628.pdf.

60 The U.S. Court of Appeals for the Ninth Circuit also upheld the material support statute’s mens rea requirement, holding that specific intent is not required for criminal liability to attach under § 2339B. *Humanitarian Law Project*, 509 F.3d at 1132-33.

61 *Humanitarian Law Project et al. v. Mukasey*, 552 F.3d 916 (9th Cir. 2009) (*en banc*).

62 See *Scales* 367 U.S. at 224-25.

63 *United States v. Al-Arian*, 308 F. Supp. 2d 1322, 1337 (M.D.FL 2004).

64 18 U.S.C. § 2339 makes it unlawful to *knowingly* provide material support to a terrorist organization. The statute further defines the mindset required for a violation as either awareness that an organization is designated under AEDPA, “has engaged or engages in terrorist activity” (defined using the Immigration Nationalization Act standard), or “has engaged or engages in terrorism” (defined by reference to a different statute). 8 U.S.C. § 1182(a)(3)(B)(iii) (2006); 22 U.S.C. § 2656f(d)(2) (2006).

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

66 UN Commission on Human Rights, Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, Martin Scheinin, A/HRC/6/17/Add.3, Nov. 22, 2007, paras 41, 47.

67 ACLU telephone interview with Laila al-Marayati, Los Angeles, CA, October 28, 2008.

68 ACLU interview with Imad Hamad, Dearborn, MI, March 20, 2009.

69 Under amendments enacted in the Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. No. 108-458, § 6603, 18 U.S.C. § 2339 makes it unlawful to *knowingly* provide material support to a terrorist organization, and as such

criminalizes donations to charities that have not been designated, based on awareness that an organization “has engaged or engages in terrorist activity” or “has engaged or engages in terrorism.” Further, the statute still does not require the government to prove that the person *specifically intended* for his or her support to advance the terrorist activities of the organization. IRTPA, Pub. L. No. 108-458, 118 Stat. 3638 [2004].

70 ACLU interview with Salman O. (pseudonym used upon request), Irving, TX, August 6, 2008.

71 ACLU interview with Fadi M. (pseudonym used upon request), Bloomfield Hills, MI, March 22, 2009.

72 ACLU interview with Elias N. (pseudonym used upon request), Richardson, TX, August 2, 2008.

73 *Id.*

74 ACLU interview with Jamal Y. (pseudonym used upon request), Plano, TX, July 31, 2008.

75 ACLU interview with Samir S. (pseudonym used upon request), Richardson, TX, August 3, 2008.

76 International Emergency Economic Powers Act (IEEPA), Pub. L. No. 95-223, tit. II, 91 Stat. 1625 (1977), 50 U.S.C.A. §§ 1701-1707 (2007), amended by Pub. L. No. 107-56, § 106 (2001).

77 Kathryn A. Ruff, *Scared to Donate: An Examination of the Effects of Designating Muslim Charities as Terrorist Organizations on the First Amendment Rights of Muslim Donors*, 9 N.Y.U. J. LEGIS. & PUB. POL’Y 447, 453 (2006).

78 50 U.S.C. § 1702(a)(1)(B) (amended pursuant to the USA PATRIOT Act).

79 Exec. Order No. 12947, 60 Fed. Reg. 5,079 (Jan. 23, 1995).

80 Exec. Order No. 13224, 60 Fed. Reg. 49,079 (Sept. 23, 2001).

81 *Id.*

82 See Opinion and Order, *Al Haramain Islamic Found., Inc. et al. v. U.S. Dep’t of Treasury et al.*, No. 07-1155-K1 (D. Or. Nov. 6, 2008); Exec. Order No. 13224, 60 Fed. Reg. 49,079 (Sept. 23, 2001).

83 50 U.S.C § 1702(c).

84 See Pub. L. No. 107-56 § 106, 115 Stat. 272 (2001); 50 U.S.C. §§ 1702(a)(1)(B), 1705.

85 U.S. Department of the Treasury, *Anti-Terrorist Financing Guidelines: Voluntary Best Practices for U.S.-Based Charities* (Nov. 2002, last updated Sept. 2006), available at http://www.treas.gov/offices/enforcement/key-issues/protecting/docs/guidelines_charities.pdf.

86 See, e.g., OMB Watch and Grantmakers without Borders, *supra* note 27, at 16, 39-47.

87 See U.S. Department of the Treasury, *supra* note 85, at 12.

88 See, e.g., Statement of Dr. Nancy Billica, Panel Discussion, Safeguarding Charity in the War on Terror, at 7-10 (June 14, 2005); see also Statement of Mr. Daniel Mitchell, Heritage Foundation, at *id.*, at 10-12 (stating that the financiers of terrorism typically have no criminal background and ordinary financial profiles that will not demonstrate their support of terrorist activities so that searching through public information is like looking for a needle in a haystack); *The 9/11 Commission Report: Identifying and Preventing Terrorist Financing*, Hearing Before the H. Comm. on Fin. Servs., 109th Cong. 108 (2004) (prepared statement of Lee H. Hamilton, Vice Chair, 9/11 Commission) (“In reality, stopping the flow of funds to al Qaeda and affiliated terrorist groups has proven to be essentially impossible.”). These statements and the Muslim Advocates comments cited below were made before the most recent revision of the Guidelines. Major organizations that have analyzed the Guidelines, however, remain critical and do not view the revisions as resolving earlier cited problems. See, e.g., OMB Watch, *Analysis: 2006 Treasury Department Voluntary Anti-Terrorist Guidelines* (stating that “the fundamental problems that le[d] the nonprofit sector to call for withdrawal of the Guidelines remain unchanged”). During the comment period before these revised guidelines were formally issued, a coalition of 40 non-profits, coordinated by the Council on Foundations, called on the Treasury Department to withdraw the revised Guidelines and to replace them with the Principles of International Charity developed by the coalition. See <http://www.cof.org/council/prdetail.cfm?ItemNumber=2709&avItemNumber=3990>.

89 See Muslim Advocates, *Comments on the U.S. Dep’t of the Treasury Anti-Terrorist Financing Guidelines: Voluntary Best Practices for U.S. Based Charities* at 4 (Feb. 1, 2006).

90 U.S. Department of the Treasury, *supra* note 85, at 2; see Muslim Advocates, *supra* note 89.

91 OMB Watch and Grantmakers without Borders, *supra* note 27, at 16.

- 92 U.S. Department of the Treasury, *supra* note 85, at n1 (cautioning that, “These Guidelines are designed to assist charities that attempt in good faith to protect themselves from terrorist abuse and are not intended to address the problem of organizations that use the cover of charitable work, whether real or perceived, to provide support to terrorist groups or fronts operating on behalf of terrorist groups. Non-adherence to these Guidelines, in and of itself, does not constitute a violation of existing U.S. law. Conversely, adherence to these Guidelines does not excuse any person (individual or entity) from compliance with any local, state, or federal law or regulation, nor does it release any person from or constitute a legal defense against any civil or criminal liability.”).
- 93 ACLU interview with Haneen A. (pseudonym used upon request), Richardson, TX, August 5, 2008.
- 94 ACLU telephone interview with Laila al-Marayati, Los Angeles, CA, October 28, 2008.
- 95 National Commission on Terrorist Attacks upon the United States, *supra* note 4, at 50, 112.
- 96 See Pub. L. No. 107-56 § 106, 115 Stat. 272 (2001); 50 U.S.C. § 1702(a)(1)(B).
- 97 National Commission on Terrorist Attacks upon the United States, *supra* note 4, at 112.
- 98 *Id.* at 8, 51.
- 99 *Id.* at 51.
- 100 ACLU telephone interview with Paul Craig Roberts, former Assistant Secretary, Department of Treasury, Panama City Beach, FL, April 9, 2009.
- 101 Opinion and Order, *Al Haramain Islamic Found., Inc. et al. v. U.S. Dep’t of Treasury et al.*, No. 07-1155-K1 (D. Or. Nov. 6, 2008).
- 102 Complaint, *KindHearts for Charitable Humanitarian Development, Inc. v. Paulson et al.*, No. 3:08-cv-2400 (N.D. Ohio 2009), available at http://www.aclu.org/pdfs/safefree/kindhearts_complaint.pdf.
- 103 Amended Protective Order, *In re KindHearts for Charitable Humanitarian Dev., Inc.*, No. 3:06-MJ-7019-VKA-1 (N.D. Ohio Oct. 15, 2008).
- 104 Order, *In re Search of KindHearts for Charitable Humanitarian Dev., Inc.*, No. 3:06-MJ-7019 (N.D. Ohio Jan. 30, 2009).
- 105 50 U.S.C. § 1702(c).
- 106 Ruff, *supra* note 77; Sahar F. Aziz, *The Laws on Providing Material Support to Terrorist Organizations: The Erosion of Constitutional Rights or a Legitimate Tool for Preventing Terrorism?* 9 TEX. J. C.L. & C.R. 45, 62-64 (2003).
- 107 National Commission on Terrorist Attacks upon the United States, *supra* note 4, at 8.
- 108 *Id.* at 111.
- 109 *Al Haramain Islamic Found., Inc. et al. v. U.S. Dep’t of Treasury et al.*, No. 07-1155-K1 at 34 (D. Or. Nov. 6, 2008).
- 110 ACLU telephone interview with Paul Craig Roberts, former Assistant Secretary, Department of Treasury, Panama City Beach, FL, April 9, 2009.
- 111 *Id.*
- 112 Judicial review of designations pursuant to AEDPA also is limited. If the Secretary of State designates an organization as an FTO, notice is provided only through an announcement in the Federal Register, and the designated organization then has 30 days to challenge the designation in the U.S. Court of Appeals for the D.C. Circuit. Although an FTO may challenge its designation in federal court, the Immigration and Nationality Act (INA) gives the government the ability to present classified information to the judge in secret (*in camera* and *ex parte*), so the designated organization never gets to see, much less dispute, the allegations against it. In addition, in court, the organization is not permitted to present new evidence, and on appeal, a court will only review the State Department’s evidence against the organization. Moreover, a judge must determine that the government acted in an arbitrary and capricious manner—a very difficult legal standard for an FTO to prove—in order to overturn a designation. 50 U.S.C. APP.5(B), 22 U.S.C. 2370(A), 22 U.S.C. 6001; Testimony of Professor David Cole, *supra* note 54.
- 113 See *Holy Land Found.*, 333 F.3d at 162 (acknowledging that actions related to the designation of terrorist organizations are subject to the “arbitrary and capricious” standard of review.
- 114 See, e.g., *id.*; *Islamic Am. Relief Agency v. Gonzales*, 477 F.3d 728, 731 (D.C. Cir. 2007) (declining to “substitute [its] judgment for OFAC’s” and requiring only a rational connection between the facts OFAC presents and its decision), cert. denied, 128 S. Ct. 92 (2007).

- 115 National Commission on Terrorist Attacks upon the United States, *supra* note 4, at 111.
- 116 Nina G. Crimm, *High Alert: The Government's War on the Financing of Terrorism and its Implications for Donors, Domestic Charitable Organizations, and Global Philanthropy*, 45 WM. & MARY L. REV. 1341, 1381 (2004).
- 117 Ruff, *supra* note 77, at 459-60.
- 118 *Holy Land Found. for Relief & Dev. v. Ashcroft*, 219 F. Supp. 2d 57, 81-82 (D.D.C. 2002).
- 119 *Holy Land Found.*, 333 F.3d at 164.
- 120 *Id.*, (“Additionally, the court found that HLF’s freedom of speech First Amendment rights had not been violated because designation and blocking of funds promote the important and substantial governmental interest in combating terrorism by undermining its financial base, and there is no other, narrower means of ensuring that charitable contributions to a terrorist organization are used for a legitimate purpose.”) (citing the district court ruling, *Holy Land Found.* 219 F. Supp. 2d at 81-82). On March 1, 2004, the Supreme Court refused to grant certiorari.
- 121 *Global Relief Foundation, Inc. v. O’Neill*, 207 F. Supp. 2d 779, 786, 190 (N.D. Ill. 2002).
- 122 *Id.*
- 123 *Id.* at 797.
- 124 *Global Relief Foundation, Inc. v. O’Neill*, 315 F.3d 748, 755 (7th Cir. 2002).
- 125 IARA alleged violations of the APA, the First, Fourth and Fifth Amendments to the United States Constitution, Civil Liability for False Affidavit, and violations of 42 U.S.C. § 1985(3).
- 126 *Islamic Am. Relief Agency v. Unidentified FBI Agents*, 394 F. Supp. 2d 34, 46-54 (D.D.C. 2005).
- 127 *Islamic Am. Relief Agency*, 477 F.3d at 732. The Supreme Court denied certiorari, *Islamic Am. Relief Agency v. Keisler*, 128 S.Ct. 92, 92 (2007).
- 128 *Islamic Am. Relief Agency*, 477 F.3d at 734.
- 129 National Commission on Terrorist Attacks upon the United States, *supra* note 4, at 9.
- 130 Government Accountability Office, *supra* note 3, at 24-29.
- 131 *Id.* at 29.
- 132 National Commission on Terrorist Attacks upon the United States, *supra* note 4, at 79.
- 133 *Id.*
- 134 See Ibrahim Warde, *THE PRICE OF FEAR: THE TRUTH BEHIND THE FINANCIAL WAR ON TERROR* (2007) [hereinafter *THE PRICE OF FEAR*]; Ibrahim Warde, *ISLAMIC FINANCE IN THE GLOBAL ECONOMY* (2000).
- 135 ACLU telephone interview with Ibrahim Warde, Medford, MA, April 10, 2009.
- 136 *Id.*
- 137 *Al Haramain Islamic Found., Inc. et al. v. U.S. Dep’t of Treasury et al.*, No. 07-1155-K1 at 31 (D. Or. Nov. 6, 2008).
- 138 *Id.* at 34.
- 139 National Commission on Terrorist Attacks upon the United States, *supra* note 4, at 107.
- 140 *Id.* at 111.
- 141 Order, Jan. 30, 2003. In a separate ruling, the court rejected the government’s proffer as insufficient to satisfy the hearsay exception for co-conspirator statements, making it more difficult for the government to present such statements at trial. *United States v. Arnaout*, No. 02-842 2003 U.S. Dist. Lexis 1635 at *1 (D. Ill. Feb. 4, 2003).
- 142 See Plea Agreement by Enaam Arnaout, *United States v. Arnaout*, No. 02-cr-00892 (N.D. Ill. Feb. 10, 2003) (Dkt. No. 178); Judgment as to Enaam Arnaout, *Arnaout* (N.D. Ill. Aug. 18, 2003) (Dkt. No. 213).
- 143 *United States v. Arnaout*, 282 F. Supp. 2d 838, 843 (N.D. Ill. 2003).
- 144 *Id.*
- 145 On retrial, HLF was convicted of providing material support for terrorism in November 2008 (detailed in Section V of this report).
- 146 Eric Lichtblau, *Islamic Charity Says FBI Falsified Evidence Against It*, N.Y. TIMES, July 27, 2004.

- 147 Greg Krikorian, *Questions Arise in Case Over Islamic Charity*, L.A. TIMES, June 18, 2006.
- 148 *Id.*
- 149 Greg Krikorian, *Judge Rejects Request by Muslim Charity*, L.A. TIMES, March 1, 2007.
- 150 Greg Krikorian, *Charity's Lawyers Say Quotes Were Fabricated*, L.A. TIMES, Feb. 25, 2007; Greg Krikorian, *False Quotes Rock Terror Trial*, L.A. TIMES, Feb. 28, 2007.
- 151 Krikorian, *Judge Rejects Request by Muslim Charity*, *supra* note 149.
- 152 *Id.*
- 153 Charity Commission Report, *Palestinians Relief and Development Fund (INTERPAL) (2003)*; Mark Oliver, *Group Cleared of Hamas Link*, GUARDIAN, Sept. 25, 2003.
- 154 Press Release, Charity Commission, *Charity Watchdog Closes Inquiry into Interpal*, Sept. 24, 2003, available at <http://www.gnn.gov.uk/imagelibrary/downloadMedia.asp?MediaDetailsID=38335>.
- 155 Warde, *THE PRICE OF FEAR*, *supra* note 134, at 145; Sean O'Neill, *Britain Rejects Bush's Charges against Charity*, DAILY TELEGRAPH, Sept. 25, 2003.
- 156 Press Release, Charity Commission, *supra* note 154.
- 157 Charity Commission Report, *supra* note 153.
- 158 O'Neill, *supra* note 155.
- 159 Press Release, Interpal, *Interpal Vindicated by Charity Commission Inquiry: No Inappropriate or Biased Distribution of Aid*, Feb. 27, 2009.
- 160 Vanessa Ortblad, *Criminal Prosecution in Sheep's Clothing: The Punitive Effects of OFAC Freezing Sanctions*, 98 J. CRIM. L. & CRIMINOLOGY 1439, 1445 (2008).
- 161 Warde, *THE PRICE OF FEAR*, *supra* note 134, at 95-102.
- 162 Christopher Cooper, *Crackdown on Terrorism Financing Ties Hands of Businessmen*, WALL ST. JOURNAL, May 6, 2002.
- 163 Press release, Department of Justice of Canada, *Canada Halts Extradition Process, Liban Hussein De-Listed*, June 3, 2002.
- 164 John Riley, *Taking Liberties: Part 3: A Powerful Weapon: Financial Sanctions are Popular Tool in War on Terror*, NEWSDAY, Sept. 17, 2002.
- 165 Robert M. Chesney, *Federal Prosecution of Terrorism-Related Offenses: Conviction and Sentencing Data of the "Soft-Sentence" and "Data-Reliability" Critiques*, 11 LEWIS & CLARK L. REV. 837 (2007).
- 166 Bureau of Justice Statistics, *COMPENDIUM OF FEDERAL JUSTICE STATISTICS, 2001*, U.S. Department of Justice Office of Justice Programs (Nov. 2003), Bureau of Justice Statistics, *COMPENDIUM OF FEDERAL JUSTICE STATISTICS, 2002*, U.S. Department of Justice Office of Justice Programs (Sept. 2004), Bureau of Justice Statistics, *COMPENDIUM OF FEDERAL JUSTICE STATISTICS, 2003*, U.S. Department of Justice Office of Justice Programs (undated), Bureau of Justice Statistics, *COMPENDIUM OF FEDERAL JUSTICE STATISTICS, 2004*, U.S. Department of Justice Office of Justice Programs (Dec. 2006).
- 167 Chesney, *supra* note 165, at 885.
- 168 *Id.* at 886.
- 169 *Id.* at 886-87.
- 170 *Id.*
- 171 U.S. Department of Justice Office of the Inspector General Audit Division, *THE DEPARTMENT OF JUSTICE'S INTERNAL CONTROLS OVER TERRORISM REPORTING* (Feb. 2007), available at <http://www.usdoj.gov/oig/reports/plus/a0720/final.pdf>; see also Dan Eggen, *Justice Dept. Statistics on Terrorism Faulted*, WASH. POST, Feb. 21, 2007, at A08; Dan Eggen and Julie Tate, *U.S. Campaign Produces Few Convictions on Terrorism Charges*, WASH. POST, June 12, 2005, at A01.
- 172 See Matthew J. Piers, *Malevolent Destruction of a Muslim Charity: A Commentary on the Prosecution of Benevolence International Foundation*, 25 *PAGE L. REV.* 339 (2005).
- 173 Kim Barker and Laurie Cohen, *Charity Chief's Trial to Start: Arnaout's Case May be Hard Sell*, CHICAGO TRIBUNE, Feb. 9, 2003; Eric Lichtblau, *Threats and Responses: The Money Trail; U.S. Indicts Head of Islamic Charity in Qaeda Financing*, N.Y. TIMES, Oct. 10, 2002; Indictment, *United States vs. Enaam Arnaout*, No. 02-CR-892 (N.D. Ill 2002).

- 174 The hearing was closed pursuant to a September 21, 2001 directive from the chief immigration judge that immigration judges close immigration proceedings in certain “special interest” cases defined by the chief judge. See *Detroit Free Press v. Ashcroft et al.*, 303 F.3d 681 (6th Cir. 2002).
- 175 Andrew Gumbel, *The Disappeared*, THE INDEPENDENT, Feb. 26, 2002; see also Rachel L. Swarns, *U.S. Deports Charity Leader in Visa Dispute*, N.Y. TIMES, Jul. 16, 2003.
- 176 ACLU telephone interview with Ibrahim Warde, Medford, MA, April 10, 2009.
- 177 *Id.*
- 178 National Commission on Terrorist Attacks upon the United States, *supra* note 4, at 50.
- 179 Ruff, *supra* note 77, at 461.
- 180 *Haddad v. Ashcroft*, 221 F. Supp. 2d 799, 800 (E.D.Mich. 2002).
- 181 *Id.*
- 182 *Id.* at 801.
- 183 *Id.*
- 184 Ann Mullen, *Haddad Breaks His Silence*, METRO TIMES, March 17, 2004 at A1.
- 185 *Detroit Free Press* 303 F.3d at 681, 711.
- 186 *Id.* at 683.
- 187 *Haddad*, 221 F. Supp. 2d at 805-06.
- 188 *Detroit Free Press v. Ashcroft*, No. 02-70339, 2002 WL 31317398, at *1 (E.D. Mich.2002).
- 189 *Id.*
- 190 *Asylum Denied to Co-Founder of Foundation*, N.Y. TIMES, Nov. 24, 2002.
- 191 Swarns, *U.S. Deports Charity Leader In Visa Dispute*, *supra* note 175; Mullen, *Haddad Breaks His Silence*, *supra* note 184, at A1.
- 192 See Amicus Curiae Brief of the Council on American-Islamic Relations in Support of the Unindicted Co-Conspirators’ First and Fifth Amendment Rights, *United States v. Holy Land Foundation et al.*, (N.D. Tex. 2007).
- 193 Memorandum of Law in Support of Petitioners’ Motion for Equitable Relief from the Government’s Public Naming of them as Unindicted Co-conspirators at 6, *United States v. Holy Land Foundation et al.*, (N.D. Tex. 2008).
- 194 U.S. Attorneys Criminal Resource Manual § 9-11.130, Limitation on Naming Persons as Unindicted Co-Conspirators, available at http://www.usdoj.gov/usao/eousa/foia_reading_room/usam/title9/11mcrm.htm#9-11.130; U.S. Attorneys Criminal Resource Manual § 9-27.760, Limitation on Identifying Uncharged Third-Parties Publicly, available at http://www.usdoj.gov/usao/eousa/foia_reading_room/usam/title9/27mcrm.htm#9-27.760.
- 195 Statements of Support, July 21, 2008, available at <http://www.aclu.org/safefree/discrim/36054res20080721.html>.
- 196 *Id.*
- 197 ACLU interview with Mohammed A. (pseudonym used upon request), Richardson, TX, May 28, 2008.
- 198 ACLU interview with Mohamed Elibiary, Carrollton, TX, May 28, 2008.
- 199 ACLU interview with Salman O. (pseudonym used upon request), Irving, TX, August 6, 2008.
- 200 *Id.*
- 201 ACLU interview with Mouffa Nahhas, Dallas, TX, May 28, 2009.
- 202 Press Release, Islamic Shura Council of Southern California et al., *U.S. Muslim Coalition Considers Suspending Relations with FBI*, March 16, 2009; see also Paloma Esquivel, *Some Influential Muslim Groups Question FBI’s Actions*, L.A. TIMES, Apr. 20, 2009.
- 203 ACLU interview with Faye M. (pseudonym used upon request), Richardson, TX, May 28, 2008.
- 204 ACLU interview with Haneen A. (pseudonym used upon request), Richardson, TX, August 5, 2008.
- 205 ACLU interview with Faye M. (pseudonym used upon request), Richardson, TX, May 28, 2008.

- 206 *Id.*
- 207 See *Boim v. Holy Land Found. for Relief and Dev.*, 511 F.3d 707, 707 (7th Cir. 2007).
- 208 *Boim v. Quranic Literacy Inst.*, 340 F. Supp. 2d 885, 931 (N.D. Ill. 2004). The jury had originally ordered the groups to pay \$56 million. The court trebled the damages.
- 209 *Holy Land Found.*, 333 F. 3d at 161.
- 210 *Holy Land Found.*, 511 F.3d at 710.
- 211 Available at <http://www.ca7.uscourts.gov/tmp/HR00KJAY.pdf>.
- 212 *Holy Land Found.*, 511 F.3d at 731.
- 213 Notably, in its *en banc* decision on rehearing, the full U.S. Court of Appeals for the Seventh Circuit again found that the district court's findings of liability for HLF were erroneous. According to the court, HLF's ties to Hamas had never been proven in the litigation, because the district court erroneously gave collateral estoppel effect to the U.S. Court of Appeals for the D.C. Circuit's earlier ruling upholding the Treasury Department's blocking order against HLF. Noting that "the validity of the blocking order did not depend on the Foundation's knowledge" of Hamas's activities, the court remanded to the district court for further proceedings to determine HLF's liability. *Boim v. Holy Land Foundation for Relief and Development*, 549 F.3d 685, 700-01 (7th Cir. 2008) (*en banc*).
- 214 *Id.* at 693-700.
- 215 *Id.*
- 216 *Id.* at 705-19 (*en banc*) (Rovner, J., dissenting).
- 217 *Id.* at 718-19.
- 218 The two designated non-Muslim U.S. charities are U.S.-based Tamil charities that provided humanitarian relief in Sri Lanka, Tamil Foundation (designated on February 11, 2009) and Tamil Rehabilitation Organization-USA (headquartered in Sri Lanka, U.S. branch designated November 15, 2007).
- 219 See, e.g., Laila al-Marayati, *American Muslim Charities: Easy Targets in the War on Terror*, 25 *PACE L. REV.* 321 (2005); Laila al-Marayati and Basil Abdelkarim, *The Crime of Being a Muslim Charity*, *WASH. POST*, March 12, 2006; OMB Watch, *MUSLIM CHARITIES AND THE WAR ON TERROR: TOP TEN CONCERNS AND STATUS UPDATES 5* (2006); Warde, *THE PRICE OF FEAR*, *supra* note 134, at 147.
- 220 ACLU interview with Farid N. (pseudonym used upon request), Dearborn, MI, March 19, 2009.
- 221 ACLU telephone interview with [name withheld upon request], former Department of Treasury official, Washington, DC, April 8, 2009.
- 222 ACLU telephone interview with Paul Craig Roberts, former Assistant Secretary, Department of Treasury, Panama City Beach, FL, April 9, 2009.
- 223 Edward Iwata and Donna Leinwand, *Chiquita Agrees to Fine for Paying Terrorists*, *USA TODAY*, March 15, 2007; Carol D. Leonnig, *In Terrorism-Law Case, Chiquita Points to U.S.*, *WASH. POST*, Aug. 2, 2007; Jordy Yager, *Chiquita Fined for Colombia Payments*, *L.A. TIMES*, Sept. 18, 2007.
- 224 OMB Watch and Grantmakers without Borders, *supra* note 27, at 38.
- 225 OMB Watch, *MUSLIM CHARITIES AND THE WAR ON TERROR: TOP TEN CONCERNS AND STATUS UPDATES 7* (2006).
- 226 Press Release, White House Office of the Press Secretary, *President Announces Progress on Financial Fight Against Terror, Remarks by the President on Financial Fight Against Terror*, Dec. 4, 2001 available at <http://georgewbush-whitehouse.archives.gov/news/releases/2001/12/20011204-8.html>.
- 227 *Id.*
- 228 David Cole, *Anti-Terrorism on Trial: Why the Government Loses Funding Cases*, *WASH. POST*, Oct. 24, 2007, at A19.
- 229 Greg Krikorian, *Accusations of Deception Traded in Terror Trial*, *L.A. TIMES*, Sept. 18, 2007.
- 230 Greg Krikorian, *Charity Trial Witness Falters*, *L.A. TIMES*, Aug. 17, 2007; Superseding Indictment, *United States v. Holy Land Foundation et al.* at paras. 3-4, No. 3:04-CR-240-P (N.D. Tex. 2008); Defendants' Statement of Material Facts as to Which There Is No Genuine Issue, *Holy Land Foundation for Relief and Development v. John Ashcroft et al.* at 23, No. 02-00442 (D.D.C. filed May 31, 2002); see also Jonathan Benthall, *The Palestinian Zakat Committees 1993-2007 and Their Contested Interpretations*, *PROGRAM FOR THE STUDY OF INTERNATIONAL ORGANIZATIONS OCCASIONAL PAPER* (2008).

- 231 Transcript of Trial, *United States v. Holy Land Foundation et al.*, No. 3:04-24-G (N.D. Tex. 2007); Laila Al-Arian, *Verdict Against Holy Land Charity Could Have a Chilling Effect on the Muslim Community*, ALTERNET, Nov. 26, 2008.
- 232 Testimony of John Boyd, Freedman Boyd Daniels Hollander Goldberg & Cline P.A., *Assessment of Tools Needed to Fight the Financing of Terrorism*, Hearing of the U.S. Senate Judiciary Committee, Nov. 20, 2004.
- 233 Leslie Eaton, *U.S. Prosecution of Muslim Group Ends in Mistrial*, N.Y. TIMES, Oct. 23, 2007; see Jury Verdict as to Holy Land Foundation for Relief and Development, *United States v. Holy Land Foundation*, No. 04-cr-00240 (N.D. Tex. Oct. 22, 2007) (Dkt. No. 863); Jury Verdict as to Shukri Abu Baker, *Holy Land Foundation* (N.D. Tex. Oct. 22, 2007) (Dkt. No. 864); Jury Verdict as to Mohammad el-Mezain, *Holy Land Foundation* (N.D. Tex. Oct. 22, 2007) (Dkt. No. 865); Jury Verdict as to Ghas-san Elashi, *Holy Land Foundation* (N.D. Tex. Oct. 22, 2007) (Dkt. No. 866); Jury Verdict as to Mufid Abdulqader, *Holy Land Foundation* (N.D. Tex. Oct. 22, 2007) (Dkt. No. 867); Jury Verdict as to Abdulrahman Odeh, *Holy Land Foundation* (N.D. Tex. Oct. 22, 2007) (Dkt. No. 868); Minute Entry, *Holy Land Foundation* (N.D. Tex. Oct. 22, 2007); Order, *Holy Land Foundation* (N.D. Tex. Oct. 22, 2007) (Dkt. No. 872).
- 234 David Koenig, *Mistrial in Muslim Charity Case*, ASSOC. PRESS, Oct. 22, 2007. The jury deadlocked on one count of conspiracy to provide material support to a foreign terrorist organization.
- 235 Greg Krikorian, *Terrorism Financing Case Ends in Mistrial*, L.A. TIMES, Oct. 23, 2007; Jason Trahan, *Prosecutors Move to Drop Charges against Holy Land Foundation Duo*, DALLAS MORNING NEWS, Sept. 2, 2008.
- 236 Jason Trahan and Michael Grabell, *Judge Declares Mistrial in Holy Land Foundation Case*, DALLAS MORNING NEWS, Oct. 22, 2007.
- 237 Peter Whoriskey, *Mistrial Declared in Islamic Charity Case: Jurors Find No Proof That Donations Indirectly Aided Militant Hamas*, WASH. POST, Oct. 23, 2007; David Koenig, *Mistrial for Most Defendants in Muslim Charity Trial*, ASSOC. PRESS, Oct. 22, 2007.
- 238 Koenig, *Mistrial in Muslim Charity Trial*, *supra* note 234.
- 239 Greg Krikorian, *Weak Case Seen in Failed Trial of Charity*, L.A. TIMES, Nov. 4, 2007.
- 240 See, e.g., Cole, *Anti-Terrorism on Trial: Why the Government Loses Funding Cases*, *supra* note 228, at A19; Krikorian, *Weak Case Seen in Failed Trial of Charity*, *supra* note 239.
- 241 OMB Watch, *Conviction of Holy Land Foundation Raises Questions, Concerns for Nonprofits*, Dec. 2, 2008.
- 242 Jason Trahan and Tanya Eiserer, *Holy Land Foundation Defendants Guilty on All Counts*, DALLAS MORNING NEWS, Nov. 25, 2008.
- 243 Jason Trahan and Tanya Eiserer, *Holy Land Foundation Defendants Guilty on All Counts*, DALLAS MORNING NEWS, Nov. 24, 2008 [earlier online version of article].
- 244 Gretel C. Kovach, *Five Convicted in Terrorism Financing Trial*, N.Y. TIMES, Nov. 24, 2008.
- 245 *Id.*
- 246 Danny Robbins, *Muslim Charity Members Get 65 Years in Prison*, ASSOC. PRESS, May 27, 2009.
- 247 See, e.g., Press Release, Child Foundation, *US Government Inquiries*, Aug. 4, 2008; James Pitkin, *Feds Raid Portland Charity That Sponsors Kids in Iran, Iraq, Afghanistan*, WILLAMETTE WEEK (Oregon), July 17, 2008; James Pitkin, *Pall at Their Party: An Unexplained Raid Haunts Annual Iranian Festival*, WILLAMETTE WEEK (Oregon), Aug. 6, 2008; James Pitkin, *Mystery Raid: Federal Seizure of Local Charity's Computers Puts Iranian Community on Edge*, WILLAMETTE WEEK (Oregon), Jul. 23, 2008; *Federal Agents Search Office of the Child Foundation*, PUBLIC AFFAIRS ALLIANCE OF IRANIAN AMERICANS, Jul. 15, 2008.
- 248 John O'Brien, *Court: State to Distribute Help the Needy's Assets*, SYRACUSE POST-STANDARD, June 24, 2005.
- 249 Three leaders of Care International, Samir Al-Monla, Emadeddin Muntasser, and Muhammed Mubayyid, were convicted in January 2008 of concealing information from the government and defrauding the federal government by obtaining tax-exempt status for the charity. Muntasser was also convicted of making false statements, and Mubayyid was also convicted of filing a false tax return. None was charged with any terrorism-related crime. See Neil MacFarquhar, *3 Convicted who Led Charity Tied to Militants*, N.Y. TIMES, Jan. 12, 2008; Jonathan Saltzman, *Judge Frees Former Leader of Islamic Charity*, BOSTON GLOBE, Jun. 3, 2008. Help the Needy's founder Rafil Dhafir, the charity's executive director Ayman Jarwan, and two other Muslim men were charged with violating the U.S. sanctions against Iraq, and Dhafir was also charged with Medicare fraud, wire and mail fraud, and other crimes. None was charged with any terrorism-related offense. In February 2005, Dhafir was convicted on 59 of 60 counts. Jarwan pled guilty to conspiracy to violate the U.S. sanctions against Iraq, and the other two men each pled guilty to an offense related to the filing of a false tax return. See Renee K. Gadoua, *Other*

Group Helping in Iraq Not Prosecuted, SYRACUSE POST-STANDARD, March 7, 2003; Thomas J. Lueck, *4 Accused of Illegally Sending Money to Iraq*, N.Y. TIMES, Feb. 27, 2003; Sam Skolnik, *Four Charged With Using Charity to Send Money to Iraq*, SEATTLE POST-INTELLIGENCER, Feb. 27, 2003; Press release, United States Attorney, Northern District of New York, *Glenn T. Suddaby, United States Attorney for the Northern District of New York, Announced Today that, after Six Days of Deliberations, a Jury in Syracuse Has Found Rafil Dhafir Guilty of 59 out of 60 Counts*, Feb. 10, 2005.

- 250 ACLU interview with Haneen A. (pseudonym used upon request), Richardson, TX, August 5, 2008.
- 251 *Id.*
- 252 *Id.*
- 253 *Id.*
- 254 Available at <http://www.npaction.org/docs/wsletterkinder.pdf>.
- 255 ACLU telephone interview with Laila al-Marayati, Los Angeles, CA, October 28, 2008.
- 256 E-mail communication from Haneen A. to the ACLU, May 14, 2009.
- 257 ACLU interview with Shereef Akeel, Troy, MI, March 19, 2009.
- 258 LIFE filed suit in federal court for return of its records. The judge rejected the government's argument that LIFE's documents required "special security arrangements" in order to be copied. LIFE successfully argued that they had a right to the documents and that the charges were exorbitant. The judge ruled that the FBI could arrange for Kinkos to copy the records at one-tenth the price and ordered the FBI to pay half of those costs. *Id.*
- 259 LIFE filed suit in federal court for return of its records. The judge rejected the government's argument that LIFE's documents required "special security arrangements" in order to be copied. LIFE successfully argued that they had a right to the documents and that the charges were exorbitant. The judge ruled that the FBI could arrange for Kinkos to copy the records at one-tenth the price and ordered the FBI to pay half of those costs. *Id.*
- 260 Gregg Krupa, *Charity Raided by FBI Cleared for Donations*, DETROIT NEWS, Sept. 26, 2008.
- 261 ACLU interview with Shereef Akeel, Troy, MI, March 19, 2009.
- 262 *Id.*
- 263 *Id.*
- 264 *Id.*
- 265 ACLU telephone interview with Dawud Walid, Southfield, MI, March 17, 2009.
- 266 ACLU interview with Shereef Akeel, Troy, MI, March 19, 2009.
- 267 ACLU interview with Farid N. (pseudonym used upon request), Dearborn, MI, March 19, 2009.
- 268 ACLU interview with Hakim M. (pseudonym used upon request), Dearborn, MI, March 20, 2009.
- 269 *Id.*
- 270 ACLU interview with Shereef Akeel, Troy, MI, March 19, 2009.
- 271 *Id.*
- 272 ACLU interview with Abed Ayoub, Dearborn, MI, March 20, 2009.
- 273 ACLU interview with Alamgeer B. (pseudonym used upon request), Detroit Metro Area, MI, March 19, 2009.
- 274 ACLU interview with Saleh H. (pseudonym used upon request), Detroit Metro Area, MI, March 19, 2009.
- 275 ACLU interview with Imad Hamad, Dearborn, MI, March 20, 2009.
- 276 *Id.*
- 277 ACLU interview with Fadi M. (pseudonym used upon request), Bloomfield Hills, MI, March 22, 2009.
- 278 ACLU interview with Usama K. (pseudonym used upon request), Dearborn, MI, March 22, 2009.
- 279 ACLU interview with Shereef Akeel, Troy, MI, March 19, 2009.
- 280 *Id.*
- 281 ACLU telephone interview with Dawud Walid, Southfield, MI, March 17, 2009.

- 282 ACLU interview with Farid N. (pseudonym used upon request), Dearborn, MI, March 19, 2009.
- 283 See, e.g., Dan Eggen and John Mintz, *Muslim Groups' IRS Files Sought: Hill Panel Probing Alleged Terror Ties*, WASH. POST, Jan. 14, 2004; Robert King, *Indiana-based Islamic Society Cleared in Senate Investigation: Senate Committee Concludes Investigation of Muslim Groups in U.S., Finds no Wrongdoings*, INDIANAPOLIS STAR, Nov. 15, 2005; Mary Beth Sheridan, *U.S. Muslim Groups Cleared: Senate Panel Finds Nothing 'Alarming' in Financial Data*, WASH. POST, Nov. 19, 2005.
- 284 ACLU interview with Shereef Akeel, Troy, MI, March 19, 2009.
- 285 ACLU interview with Abdallah F. (pseudonym used upon request), Dearborn, MI, March 21, 2009.
- 286 *Id.*
- 287 *Id.*
- 288 *Id.*
- 289 ACLU interview with Shereef Akeel, Troy, MI, March 19, 2009; Niraj Warikoo, *Community Leaders Urge Support for Islamic Charity*, DETROIT FREE PRESS, Sept. 21, 2006.
- 290 Teresa Watanabe and Paloma Esquivel, *L.A. Area Muslims Say FBI Surveillance Has a Chilling Effect on Their Free Speech and Religious Practice*, L.A. TIMES, Mar. 1, 2009.
- 291 *Id.*
- 292 Peter Waldman, *A Muslim's Choice: Turn U.S. Informant or Risk Losing Visa*, WALL ST. JOURNAL, July 11, 2006.
- 293 ACLU interview with Alamgeer B. (pseudonym used upon request), Detroit Metro Area, MI, March 19, 2009.
- 294 *Id.*
- 295 *Id.*
- 296 *Id.*
- 297 ACLU interview with Kamal T. (pseudonym used upon request), Plano, TX, August 1, 2008.
- 298 ACLU interview with Mahmoud A. (pseudonym used upon request), Richardson, TX, August 3, 2008.
- 299 ACLU interview with Haneen A. (pseudonym used upon request), Richardson, TX, August 5, 2008.
- 300 Jennifer Meyers, *Lawyer Backs Islamic Agency*, THE COLUMBIA MISSOURIAN, Oct. 22, 2004.
- 301 Renee K. Gadoua, *Up to 150 Questioned; Doctor is Denied Bail; Muslims Afraid to Speak Out Publicly*, SYRACUSE POST-STANDARD, March 1, 2003.
- 302 *Id.*; Renee K. Gadoua, *Muslim Community Scared in Aftermath of Federal Sting*, SYRACUSE POST-STANDARD, Feb. 28, 2003; Michael Powell, *High-Profile N.Y. Suspect Goes on Trial*, WASH. POST, Oct. 19, 2004; NYCLU Central New York Chapter, Bill Of Rights Defense Campaign—Muslim Solidarity Day, available at http://www.nyclu.org/regions/central/bordc_muslim_solidarity_day.
- 303 Gadoua, *Other Group Helping in Iraq Not Prosecuted*, *supra* note 249.
- 304 *Muslim Cmty Ass'n of Ann Arbor v. Ashcroft*, 459 F. Supp. 2d 592 (E.D. Mich. 2006).
- 305 ACLU interview with Farid N. (pseudonym used upon request), Dearborn, MI, March 19, 2009.
- 306 *Id.*
- 307 ACLU interview with Shereef Akeel, Troy, MI, March 19, 2009.
- 308 ACLU interview with Abdallah F. (pseudonym used upon request), Dearborn, MI, March 21, 2009.
- 309 *Id.*
- 310 ACLU interview with Hakim M. (pseudonym used upon request), Dearborn, MI, March 20, 2009.
- 311 ACLU interview with Shada T. (pseudonym used upon request), Detroit, MI, March 22, 2009.
- 312 ACLU interview with Nadir Y. (pseudonym used upon request), Irving, TX, August 6, 2008.
- 313 ACLU interview with Imad Hamad, Dearborn, MI, March 20, 2009.
- 314 *Id.*

- 315 Notably, federal prosecutors brought criminal contempt charges against professor Sami Al-Arian in the U.S. District Court for the Eastern District of Virginia, for his refusal to testify before a grand jury investigating Muslim charitable groups and other Virginia-based organizations. Tom Jackman, *Contempt Charges Will Stand In Terrorism-Related Case*, WASH. POST, Jan. 17, 2009; Jerry Markon, *Ex-Professor's Contempt Citation Prolonged*, WASH. POST, June 22, 2007; Scott Horton, *More Prosecutorial Misconduct in the Al-Arian Case*, HARPERS, March 11, 2009; Wendy Malloy, *A Florida Terrorism Suspect's Legal Odyssey*, TIME, March 18, 2009.
- 316 ACLU interview with Shereef Akeel, Troy, MI, March 19, 2009.
- 317 ACLU interview with Abdallah F. (pseudonym used upon request), Dearborn, MI, March 21, 2009.
- 318 ACLU interview with Mahdi W. (pseudonym used upon request), Dearborn, MI, March 20, 2009.
- 319 ACLU telephone interview with Dawud Walid, Southfield, MI, March 17, 2009.
- 320 *Id.*
- 321 Muslim Advocates, UNREASONABLE INTRUSIONS: INVESTIGATING THE POLITICS, FAITH & FINANCES OF AMERICANS RETURNING HOME, Apr. 2009, available at http://www.muslimadvocates.org/documents/Unreasonable_Intrusions_2009.pdf.
- 322 Jeffrey C. Billman, *Malicious Prosecution*, ORLANDO WEEKLY, July 17, 2003.
- 323 Manuel Roig-Fanzia, *Florida Arrest Renews Debate Over Muslim Charities*, WASH. POST, Jan. 4, 2003.
- 324 *Id.*
- 325 Riad Z. Abdelkarim, *After Year of Uncertainty, American Muslim Charitable Donations Rebound*, WASHINGTON REPORT ON MIDDLE EAST AFFAIRS 62-63, 2004; Billman, *Malicious Prosecution*, *supra* note 322.
- 326 Billman, *Malicious Prosecution*, *supra* note 322.
- 327 Manuel Roig-Franzia, *Florida Arrest Renews Debate Over Muslim Charities*, WASH. POST, Jan. 4, 2003.
- 328 *Id.*
- 329 Bob Mervine, *The High Price of Bad Publicity*, ORLANDO BUSINESS JOURNAL, July 11, 2003.
- 330 Jeffrey C. Billman, *Prosecuted Unto Death*, ORLANDO WEEKLY, Feb. 3, 2005.
- 331 *Id.*; see also Pedro Ruz Gutierrez and Jim Leusner, *I-Drive's Maali Dies of Cancer; Gift-Shop King was Facing Trial on Federal Tax Charges*, ORLANDO SENTINEL, Jan. 23, 2005.
- 332 Brenda Goodman, *Leader of a Georgia Mosque Pleads Guilty to Aiding Hamas*, N.Y. TIMES, Oct. 14, 2006.
- 333 *Leader of a Georgia Mosque Pleads Guilty to Aiding Hamas*, N.Y. TIMES, Oct. 14, 2006.
- 334 *U.S. Imam Jailed for Supporting Hamas*, AL JAZEERA ENGLISH, Feb. 28, 2007.
- 335 *Id.*
- 336 Brenda Goodman, *Leader of a Georgia Mosque Pleads Guilty to Aiding Hamas*, N.Y. TIMES, Oct. 14, 2006; *U.S. Imam Jailed for Supporting Hamas*, *supra* note 334.
- 337 *Id.*
- 338 Press Release, United States Attorney, Northern District of Georgia, *Georgia Man Sentenced to Federal Prison for Material Support of Terrorist Group*, Feb. 27, 2007.
- 339 Jason Trahan, *Former Holy Land Representative Says Charity Collected Money for Hamas*, DALLAS MORNING NEWS, Oct. 29, 2008.
- 340 *Id.*
- 341 U.S. Department of State Bureau of International Narcotics and Law Enforcement Affairs, *International Narcotics Control Strategy Report, Law Enforcement Cases*, March 2008.
- 342 Timothy Egan, *Terrorism Task Force Detains an American Without Charges*, N.Y. TIMES, Apr. 4, 2003; see also ACLU and Human Rights Watch, WITNESS TO ABUSE: HUMAN RIGHTS ABUSES UNDER THE MATERIAL WITNESS LAW SINCE SEPTEMBER 11, June 25, 2005 at 66, available at <http://www.aclu.org/FilesPDFs/materialwitnessreport.pdf>.
- 343 Laurie Goodstein, *Muslims Hesitating on Gifts as U.S. Scrutinizes Charities*, N.Y. TIMES, Apr. 17, 2003; Mark Larabee and Les Kaitz, *FBI, Joint Terrorism Agents Search Home in Hillsboro*, THE OREGONIAN, March 21, 2003.

- 344 See, e.g., Matt Kelley, *Olajuwon's Mosque Donated Money to Alleged Terror Fronts, Records Show*, ASSOC. PRESS, Feb. 9, 2005; Assoc. Press, *Terror Fronts Got Money from Olajuwon's Mosque*, N.Y. TIMES, Feb. 10, 2005; Assoc. Press, *Olajuwon's Mosque Cited in Funding Link to Terrorists*, WASH. POST, Feb. 10, 2005; Corky Siemaszko, *Hoops Great Gave Big Assist to Mosque that Aided Osama*, N.Y. DAILY NEWS, Feb. 10, 2005; David Picker, *Olajuwon Says He Gave in Good Faith*, N.Y. TIMES, Feb. 16, 2005; *Olajuwon Terror Scandal*, SPORTS ILLUSTRATED, Feb. 9, 2005.
- 345 Picker, *Olajuwon Says He Trusted Charities*, *supra* note 344.
- 346 *Id.*
- 347 Teresa Watanabe and Scott Glover, *Man Says he was Informant for FBI in Orange County*, L.A. TIMES, Feb. 26, 2009; Gillian Flaccus, *Calif. Case Highlights Use of Mosque Informants*, ASSOC. PRESS, Mar. 1, 2009; Josh Meyer, *'Ft. Dix Six' Informants in Hot Seat Too*, L.A. TIMES, Oct. 19, 2008; William K. Rashbaum, *Terror Case May Offer Clues Into Police Use of Informants*, N.Y. TIMES, Apr. 24, 2006.
- 348 William K. Rashbaum, *Informer in Bomb Plot Trial Tells of His Visits to Mosques*, N.Y. TIMES, May 2, 2006; Robin Shulman, *The Informer: Behind the Scenes, or Setting the Stage?*, WASH. POST, May 29, 2007.
- 349 Teresa Watanabe and Scott Glover, *Man Says he was Informant for FBI in Orange County*, *supra* note 347; Gillian Flaccus, *Calif. Case Highlights Use of Mosque Informants*, *supra* note 347; Teresa Watanabe and Paloma Esquivel, *L.A. Area Muslims Say FBI Surveillance Has a Chilling Effect on Their Free Speech and Religious Practice*, *supra* note 290.
- 350 Gregg Krupa, *Muslim Groups Ask U.S. Attorney General to Investigate FBI Tactics*, DETROIT NEWS, Apr. 16, 2009; Jeff Karoub, *Michigan Muslim Group Says FBI Asking People To Spy*, ASSOC. PRESS, Apr. 16, 2009.
- 351 ACLU telephone interview with Dawud Walid, Southfield, MI, March 17, 2009.
- 352 Barbara Ferguson, *Bush Memo Reveals Unprecedented Scope of Power*, McCLATCHY, Mar. 4, 2009.
- 353 ACLU interview with Ashur M. (pseudonym used upon request), Dearborn, MI, March 21, 2009.
- 354 Teresa Watanabe and Paloma Esquivel, *L.A. Area Muslims Say FBI Surveillance Has a Chilling Effect on Their Free Speech and Religious Practice*, *supra* note 290.
- 355 ACLU interview with Lama W. (pseudonym used upon request), Dearborn, MI, March 21, 2009.
- 356 ACLU interview with Melissa R. (pseudonym used upon request), Richardson, TX, August 6, 2008.
- 357 *Id.*
- 358 ACLU interview with Abdullah Mikail MacKay, Dallas, TX, August 3, 2008.
- 359 ACLU interview with Imam Mohammad Ali Elahi, Dearborn Heights, MI, March 21, 2009.
- 360 ACLU interview with Imad Hamad, Dearborn, MI, March 20, 2009.
- 361 *Id.*
- 362 ACLU interview with Abed Ayoub, Dearborn, MI, March 20, 2009.
- 363 *Id.*
- 364 ACLU interview with Amer Shakil, Carrollton, TX, August 2, 2008.
- 365 ACLU interview with Gabir E. (pseudonym used upon request), Troy, MI, March 21, 2009.
- 366 ACLU interview with Malik P. (pseudonym used upon request), Dearborn, MI, March 22, 2009.
- 367 ACLU interview with Imad Hamad, Dearborn, MI, March 20, 2009.
- 368 See, e.g., David Cole and Jules Lobel, *LESS SAFE, LESS FREE: WHY AMERICA IS LOSING THE WAR ON TERROR* 109-122 (2007).
- 369 ACLU telephone interview with [name withheld upon request], former Department of Treasury official, Washington, DC, April 8, 2009.
- 370 *Id.*
- 371 Henry J. Waters III, *War and Justice: Hamoodi, IARA, FBI, et al.*, COLUMBIA DAILY TRIBUNE, Sept. 24, 2006.
- 372 Michael J. Sniffen, *Government Asserts Broad Power to Detain Enemy Combatants at Guantanamo Bay*, ASSOC. PRESS, Dec. 2, 2004; Terry Frieden, *U.S. Grilled Over Terror Policies*, CNN, Dec. 2, 2004.

- 373 See, e.g., Center for Strategic and International Studies (for USAID), *THE IDEA OF PHILANTHROPY IN MUSLIM CONTEXTS* (2004); Crimm, *supra* note 116.
- 374 ACLU interview with Sheikh Mohamad Musa, Bloomfield Hills, MI, March 21, 2009.
- 375 ACLU interview with Imam Sayid Hassan Al-Qazwini, Dearborn, MI, March 22, 2009.
- 376 ACLU interview with Yaseen Sheikh, Plano, TX, August 1, 2008.
- 377 ACLU interview with Imam Dr. Yusuf Z. Kavacki, Richardson, TX, August 6, 2008.
- 378 Pew Research Center, *Muslim Americans: Middle Class and Mostly Mainstream* 25 (May 2007), available at <http://pewresearch.org/assets/pdf/muslim-americans.pdf>.
- 379 *Id.*
- 380 Gallup Center for Muslim Studies, *Muslim Americans: A National Portrait* 51 (March 2009), available at <http://www.muslimwestfacts.com/mwf/116074/Muslim-Americans-National-Portrait.aspx>.
- 381 ACLU interview with Abdul C. (pseudonym used upon request), Plano, TX, August 1, 2008.
- 382 ACLU interview with Rabia Said, Richardson, TX, August 3, 2008.
- 383 ACLU interview with Omar S. (pseudonym used upon request), Plano, TX, July 21, 2008.
- 384 ACLU interview with Rasheed K., Richardson, TX, August 6, 2008.
- 385 ACLU interview with Kamal T. (pseudonym used upon request), Plano, TX, August 1, 2008.
- 386 ACLU interview with Mansoor K. (pseudonym used upon request), Plano, TX, August 1, 2008.
- 387 See, e.g., Jonathan Benthall and Jérôme Bellion-Jourdan, *THE CHARITABLE CRESCENT: POLITICS OF AID IN THE MUSLIM WORLD* 8-12 (2009).
- 388 See *Id.* at 10.
- 389 Warde, *THE PRICE OF FEAR*, *supra* note 134, at 146.
- 390 See, e.g., Benthall & Bellion-Jourdan, *supra* note 387, at 9-12.
- 391 ACLU interview with Mohamed Beydoun, Dearborn, MI, March 19, 2009.
- 392 ACLU interview with Jamal Eddine Saih, Plano, TX, July 31, 2008.
- 393 See, e.g., Neil MacFarquhar, *Fears of Inquiry Dampen Giving by U.S. Muslims*, N.Y. TIMES, Oct. 30, 2006, at A1; *Muslims Alter Ramadan Giving*, L.A. TIMES, Nov. 2, 2002, at B20; Laurie Goodstein, *Since 9/11, Muslims Look Closer to Home*, N.Y. TIMES, Nov. 15, 2004, at F1; Teresa Watanabe, *U.S. Muslims Temper Ramadan Giving with Caution*, L.A. TIMES, Nov. 6, 2004, at B2; Alex Cohen, *Day to Day Show: Muslims Concerned About Donations, Interview of Imam Sayed Moustafa Al-Qazwini* (Nat'l Pub. Radio broadcast July 26, 2007); Gregg Krupa, *Muslims Seek "Safe" Charities for Giving*, DETROIT NEWS, Oct. 5, 2007, at 1A; *Talk of the Nation: Arab Americans Hesitant to Donate to Lebanese Charities* (Nat'l Pub. Radio broadcast Aug. 9, 2006); Alan Cooperman, *Stung by Accusations, America's Muslims Alter Giving*, CHI. TRIB., Dec. 11, 2002, at 37; Madhu Krishnamurthy, *Fears About Charities Force Muslims to Change How They Give*, CHI. DAILY HERALD, Nov. 11, 2003, at A11; Goodstein, *Muslims Hesitating on Gifts as U.S. Scrutinizes Charities*, *supra* note 343, at B1.
- 394 Ian Wilhelm, *Muslim Charities Accuse Government of Harming their Fund Raising*, CHRON. PHILANTHROPY, Vol. 15 Issue 6, at 25 (2003); Caroline Preston, *Donations Trickle in to Charities Providing Middle East Aid*, CHRON. PHILANTHROPY, July 27, 2006; Alan Cooperman, *Muslim Charities Say Fear Is Damming Flow of Money*, WASH. POST, Aug. 9, 2006, at A3; Audrey Hudson, *CAIR Concedes Membership Down; Blames U.S. for Linking It to Charity on Trial for Terrorist Ties*, WASH. TIMES, Aug. 22, 2007; Jeff Shields et al., *Islamic Charities Feeling the Pinch; Allegations of Terrorist Links, Frozen Assets Dry Up Contributions*, S. FLA. SUN-SENTINEL, June 19, 2002, at 1A; Holly Kernan, *Donations to Muslim Charities Down Due to Increased Government Scrutiny* (Nat'l Pub. Radio broadcast, Dec. 1, 2001); Sara Harris, *U.S. Government Action to Seize Funds Allegedly Tied to Terrorists Has Also Affected Some American Muslim Charities* (Minnesota Public Radio broadcast, Dec. 26, 2001).
- 395 ACLU interview with Abu R. (pseudonym used upon request), Richardson, TX, August 3, 2008.
- 396 ACLU interview with Abdullah Mikail MacKay, Dallas, TX, August 3, 2008.
- 397 ACLU interview with Sharif B. (pseudonym used upon request), Richardson, TX, August 2, 2008.
- 398 ACLU interview with Abaan S. (pseudonym used upon request), Dearborn, MI, March 22, 2009.
- 399 *Id.*

- 400 ACLU interview with Jamal Y. (pseudonym used upon request), Plano, TX, July 31, 2008.
- 401 ACLU interview with Farhana S. (pseudonym used upon request), Richardson, TX, August 5, 2008.
- 402 ACLU interview with Mohammed A. (pseudonym used upon request), Richardson, TX, May 28, 2008.
- 403 ACLU interview with Hussein N. (pseudonym used upon request), Plano, TX, August 4, 2008.
- 404 *Id.*
- 405 ACLU interview with Jamal Y. (pseudonym used upon request), Plano, TX, July 31, 2008.
- 406 ACLU telephone interview with [name withheld upon request], former Department of Treasury official, Washington, DC, April 8, 2009.
- 407 ACLU interview with Samir S. (pseudonym used upon request), Richardson, TX, August 3, 2008.
- 408 *See, e.g.,* Margaret Ryan, *Charity Gets Royal Seal of Approval*, BBC, Nov. 1, 2001.
- 409 ACLU interview with Ahmed M. (pseudonym used upon request), Carrollton, TX, August 2, 2008.
- 410 ACLU interview with Imam Sayid Hassan Al-Qazwini, Dearborn, MI, March 22, 2009.
- 411 ACLU interview with Imam Mohammad Ali Elahi, Dearborn Heights, MI, March 21, 2009.
- 412 *Id.*
- 413 As detailed in section III of this report, because the criminal material support provisions still do not require the government to prove that the person specifically intended for his or her support to advance the terrorist activities of the designated organization, the laws leave open the possibility that donors to Muslim charities may be exposed to criminal liability for their donations made with the good-faith intention to support humanitarian aid, as long as he or she provides the support knowing that the recipient organization has been designated as a terrorist organization or that the organization has been or is involved in “terrorist activity.” Further, the ACLU found that there was widespread confusion among donors regarding their possible criminal liability for charitable donations made in good faith.
- 414 ACLU interview with Mansoor K. (pseudonym used upon request), Plano, TX, August 1, 2008.
- 415 *Id.*
- 416 ACLU interview with Malik P. (pseudonym used upon request), Dearborn, MI, March 22, 2009.
- 417 ACLU interview with Samir S. (pseudonym used upon request), Richardson, TX, August 3, 2008.
- 418 ACLU interview with Sharif B. (pseudonym used upon request), Richardson, TX, August 2, 2008.
- 419 ACLU interview with Gabir E. (pseudonym used upon request), Troy, MI, March 21, 2009.
- 420 *Id.*
- 421 ACLU interview with Abdullah J. (pseudonym used upon request), Allen, TX, August 2, 2008.
- 422 ACLU interview with Naaserden Chang, Plano, TX, August 1, 2008.
- 423 ACLU interview with Abdullah J. (pseudonym used upon request), Allen, TX, August 2, 2008.
- 424 ACLU interview with Abu Amir S. (pseudonym used upon request), Allen, TX, August 2, 2008.
- 425 ACLU interview with Imad Hamad, Dearborn, MI, March 20, 2009.
- 426 ACLU interview with Usama K. (pseudonym used upon request), Dearborn, MI, March 22, 2009.
- 427 *Id.*
- 428 ACLU interview with Samir S. (pseudonym used upon request), Richardson, TX, August 3, 2008.
- 429 ACLU interview with Abu R. (pseudonym used upon request), Richardson, TX, August 3, 2008.
- 430 ACLU interview with Azhar Azeez, Plano, TX, August 1, 2008.
- 431 ACLU telephone interview with [name withheld upon request], former Department of Treasury official, Washington, DC, April 8, 2009.
- 432 ACLU interview with La Tonya Rashidah Floyd, Richardson, TX, August 3, 2008.
- 433 ACLU interview with Shada T. (pseudonym used upon request), Detroit, MI, March 22, 2009.

- 434 ACLU interview with Malika B. (pseudonym used upon request), Richardson, TX, August 5, 2008.
- 435 ACLU interview with Usama K. (pseudonym used upon request), Dearborn, MI, March 22, 2009.
- 436 ACLU interview with Lama W. (pseudonym used upon request), Dearborn, MI, March 21, 2009.
- 437 *Id.*
- 438 *Id.*
- 439 ACLU telephone interview with Kamal J. (pseudonym used upon request), Bedford, TX, August 6, 2008.
- 440 *Id.*
- 441 ACLU interview with Salma H. (pseudonym used upon request), Dearborn Heights, MI, March 21, 2009.
- 442 *Id.*
- 443 *Id.*
- 444 ACLU interview with Abu R. (pseudonym used upon request), Richardson, TX, August 3, 2008.
- 445 ACLU interview with Yaseen Sheikh, Plano, TX, August 1, 2008.
- 446 ACLU interview with Farid N. (pseudonym used upon request), Dearborn, MI, March 19, 2009.
- 447 8 U.S.C. § 1182.
- 448 See, e.g., Marisa Taylor, *supra* note 35; Human Rights First, *supra* note 35.
- 449 David Cole and Jules Lobel, LESS SAFE, LESS FREE: WHY AMERICA IS LOSING THE WAR ON TERROR, *supra* note 368, at 49; T.R. Goldman, *Refugees from Oppressive Regimes Kept Out*, LEGAL TIMES 1, June 12, 2006.
- 450 Center for Human Rights and Global Justice, NYU School of Law, AMERICANS ON HOLD: PROFILING, CITIZENSHIP, AND THE "WAR ON TERROR" (2007); Press Release, ACLU, *Immigrants' Rights Advocates and ACLU File Lawsuit to End Illegal Delays in Processing Citizenship Applications*, Apr. 1, 2008.
- 451 See, e.g., Plaintiff's Petition for Naturalization and Complaint for Injunctive and Mandamus Relief, *Al Matchy v. Mukasey et al.*, No. 08-CV-2328 CM/DJW (D.Kan. filed July 15, 2008); Complaint, *Zhang et al. v. Gonzales et al.*, No. 07-CV-05003-JL (N.D.Cal. filed Feb. 8, 2007).
- 452 ACLU interview with Ammar F. (pseudonym used upon request, Plano, TX, July 31, 2008.
- 453 ACLU interview with Jamal Y. (pseudonym used upon request), Plano, TX, July 31, 2008.
- 454 ACLU interview with Abu R. (pseudonym used upon request), Richardson, TX, August 3, 2008.
- 455 ACLU interview with Mustafa S. (pseudonym used upon request), Dallas, TX, August 6, 2008.
- 456 ACLU interview with Kamal T. (pseudonym used upon request), Plano, TX, August 1, 2008.
- 457 ACLU interview with Alaa Yassine, Plano, TX, July 31, 2008.
- 458 ACLU interview with Yaseen Sheikh, Plano, TX, August 1, 2008.
- 459 ACLU telephone interview with [name withheld upon request], former Department of Treasury official, Washington, DC, April 8, 2009.
- 460 ACLU interview with Gabir E. (pseudonym used upon request), Troy, MI, March 21, 2009.
- 461 *Id.*
- 462 ACLU interview with Naaserden Chang, Plano, TX, August 1, 2008.
- 463 ACLU interview with Jamal Y. (pseudonym used upon request), Plano, TX, July 31, 2008.
- 464 ACLU interview with Salma H. (pseudonym used upon request), Dearborn Heights, MI, March 21, 2009.
- 465 *Id.*
- 466 ACLU interview with Malika B. (pseudonym used upon request), Richardson, TX, August 5, 2008.
- 467 *Id.*
- 468 ACLU interview with Omar S. (pseudonym used upon request), Plano, TX, July 21, 2008.

- 469 One of the allegations against the Holy Land Foundation for Relief and Development was that four of the orphans in its orphan sponsorship program were the orphaned children of men who died while making bombs.
- 470 ACLU interview with Samir S. (pseudonym used upon request), Richardson, TX, August 3, 2008.
- 471 *Id.*
- 472 ACLU interview with Muhammad H. (pseudonym used upon request), Dallas, TX, May 29, 2008.
- 473 ACLU interview with Abdullah J. (pseudonym used upon request), Allen, TX, August 2, 2008.
- 474 ACLU telephone interview with Laila al-Marayati, Los Angeles, CA, October 28, 2008.
- 475 ACLU interview with Yaseen Sheikh, Plano, TX, August 1, 2008.
- 476 ACLU interview with Imam Dr. Yusuf Z. Kavacki, Richardson, TX, August 6, 2008.
- 477 ACLU interview with Mansoor K. (pseudonym used upon request), Plano, TX, August 1, 2008.
- 478 ACLU interview with Koresh A. (pseudonym used upon request), Allen, TX, August 2, 2008.
- 479 ACLU interview with Mansoor K. (pseudonym used upon request), Plano, TX, August 1, 2008.
- 480 ACLU interview with Yaseen Sheikh, Plano, TX, August 1, 2008.
- 481 ACLU interview with Nabil Sadoun, Richardson, TX, August 3, 2008.
- 482 Department of Treasury, Office of Foreign Assets Control, *Terrorist Assets Report 2007* at 6 (Oct. 10, 2008), available at <http://www.treas.gov/offices/enforcement/ofac/reports/tar2007.pdf>.
- 483 See 31 C.F.R. 501 and 597; see also OMB Watch and Grantmakers without Borders, *supra* note 27, at 61-66.
- 484 ACLU interview with Yaseen Sheikh, Plano, TX, August 1, 2008.
- 485 *Id.*
- 486 ACLU interview with Imam Dr. Yusuf Z. Kavacki, Richardson, TX, August 6, 2008.
- 487 *Id.*
- 488 ACLU interview with Salman O. (pseudonym used upon request), Irving, TX, August 6, 2008.
- 489 ACLU interview with Kamal T. (pseudonym used upon request), Plano, TX, August 1, 2008.
- 490 ACLU interview with Nadir Y. (pseudonym used upon request), Irving, TX, August 6, 2008.
- 491 *Id.*
- 492 ACLU interview with Mahdi W. (pseudonym used upon request), Dearborn, MI, March 20, 2009.
- 493 *Id.*
- 494 ACLU interview with Nabil Sadoun, Richardson, TX, August 3, 2008.
- 495 ACLU interview with Imran H. (pseudonym used upon request), Plano, TX, August 1, 2008.
- 496 See Indictment, *United States v. Islamic American Relief Agency et al.*, No. 07-00087-01107-CR-W-NKL (W.D. MO 2007); Superseding Indictment, *United States v. Holy Land Foundation et al.* at 38-39, No. 3:04-CR-240-P (N.D. Tex. 2008).
- 497 ACLU interview with Shereef Akeel, Troy, MI, March 19, 2009.
- 498 ACLU interview with Imam Mohammad Ali Elahi, Dearborn Heights, MI, March 21, 2009.
- 499 ACLU interview with Rabia Said, Richardson, TX, August 3, 2008.
- 500 ACLU interview with Salman O. (pseudonym used upon request), Irving, TX, August 6, 2008.
- 501 ACLU interview with Nadir Y. (pseudonym used upon request), Irving, TX, August 6, 2008.
- 502 ACLU interview with Koresh A. (pseudonym used upon request), Allen, TX, August 2, 2008.
- 503 ACLU interview with Jamal Y. (pseudonym used upon request), Plano, TX, July 31, 2008.
- 504 ACLU interview with Nabil Sadoun, Richardson, TX, August 3, 2008.
- 505 *Id.*
- 506 ACLU interview with Melissa R. (pseudonym used upon request), Richardson, TX, August 6, 2008.

- 507 *Id.*
- 508 ACLU interview with Gabir E. (pseudonym used upon request), Troy, MI, March 21, 2009.
- 509 *Id.*
- 510 ACLU telephone interview with Kamal J. (pseudonym used upon request), Bedford, TX, August 6, 2008.
- 511 ACLU interview with Melissa R. (pseudonym used upon request), Richardson, TX, August 6, 2008.
- 512 *Id.*
- 513 ACLU telephone interview with Laila al-Marayati, Los Angeles, CA, October 28, 2008.
- 514 ACLU interview with Zafir T. (pseudonym used upon request), Irving, TX, August 6, 2008.
- 515 ACLU interview with Nadir Y. (pseudonym used upon request), Irving, TX, August 6, 2008.
- 516 *See, e.g.,* Bakalian & Bozorgmehr, *supra* note 19, at 163-65, 173-74.
- 517 ACLU interview with Mohamed Elibiary, Carrollton, TX, May 28, 2008.
- 518 National Commission on Terrorist Attacks upon the United States, *supra* note 4, at 50, 112.
- 519 Remarks to the Turkish Parliament, *supra* note 22.
- 520 ACLU telephone interview with Ibrahim Warde, Medford, MA, April 10, 2009.
- 521 *Id.*
- 522 *Id.*
- 523 *See, e.g.,* Bakalian & Bozorgmehr, *supra* note 19, at 163-65, 173-74.
- 524 Illinois Advisory Committee to the US Commission on Civil Rights, *Arab and Muslim Civil Rights Issues in the Chicago Metropolitan Area Post-September 11* (May 2003).
- 525 ACLU interview with Mohamed Elibiary, Carrollton, TX, May 28, 2008.
- 526 ACLU interview with Naaserden Chang, Plano, TX, August 1, 2008.
- 527 ACLU interview with La Tonya Rashidah Floyd, Richardson, TX, August 3, 2008.
- 528 ACLU interview with Sufian Nabhan, Dearborn, MI, March 20, 2009.
- 529 National Commission on Terrorist Attacks upon the United States, *supra* note 4, at 50, 112.
- 530 *Id.* at 111.
- 531 ACLU telephone interview with [name withheld upon request], former Department of Treasury official, Washington, DC, April 8, 2009.
- 532 *Id.*
- 533 ACLU telephone interview with Ibrahim Warde, Medford, MA, April 10, 2009.
- 534 *Id.*
- 535 *Id.*
- 536 ACLU telephone interview with [name withheld upon request], former Department of Treasury official, Washington, DC, Apr. 8, 2009.
- 537 *Role of the FBI in Global Terrorism*, Feb. 23, 2009, available at http://www.c-spanarchives.org/library/index.php?main_page=product_video_info&products_id=284244-1&showVid=true.
- 538 Frontline, *The Enemy Within, Interview, James Wedick*, transcript of taped interview, June 30, 2006, available at <http://www.pbs.org/wgbh/pages/frontline/enemywithin/interviews/wedick.html>.
- 539 Remarks to the Turkish Parliament, *supra* note 22.
- 540 U.S. Treasury Department. "Contribution by the Department of the Treasury to the Financial War on Terrorism." Fact Sheet. Washington, D.C. Sept. 2002, at 5.
- 541 ACLU telephone interview with Ibrahim Warde, Medford, MA, April 10, 2009.
- 542 Warde, *THE PRICE OF FEAR*, *supra* note 134, at 97.

- 543 ACLU telephone interview with Ibrahim Warde, Medford, MA, April 10, 2009.
- 544 *Id.*
- 545 *Id.*
- 546 ACLU interview with Shereef Akeel, Troy, MI, March 19, 2009.
- 547 ACLU telephone interview with Dawud Walid, Southfield, MI, March 17, 2009.
- 548 ACLU telephone interview with Ibrahim Warde, Medford, MA, April 10, 2009.
- 549 ACLU interview with Farid N. (pseudonym used upon request), Dearborn, MI, March 19, 2009.
- 550 ACLU interview with Imad Hamad, Dearborn, MI, March 20, 2009.
- 551 Testimony of Salam al-Marayati, *Assessment of Tools Needed to Fight the Financing of Terrorism*, Hearing of the U.S. Senate Judiciary Committee, Nov. 20, 2004.
- 552 ACLU interview with Salma H. (pseudonym used upon request), Dearborn Heights, MI, March 21, 2009.
- 553 ACLU interview with Hussein N. (pseudonym used upon request), Plano, TX, August 4, 2008.
- 554 ACLU interview with Salma H. (pseudonym used upon request), Dearborn Heights, MI, March 21, 2009.
- 555 ACLU interview with Abida M. (pseudonym used upon request), Dearborn, MI, March 22, 2009.
- 556 ACLU interview with Melissa R. (pseudonym used upon request), Richardson, TX, August 6, 2008.
- 557 ACLU interview with Kamal T. (pseudonym used upon request), Plano, TX, August 1, 2008.
- 558 ACLU interview with Taayib O. (pseudonym used upon request), Plano, TX, August 1, 2008.
- 559 ACLU interview with Sufian Nabhan, Dearborn, MI, March 20, 2009.
- 560 *Id.*
- 561 ACLU interview with Talal J. (pseudonym used upon request), Plano, TX, August 1, 2008.
- 562 ACLU interview with Elias N. (pseudonym used upon request), Richardson, TX, August 2, 2008.
- 563 ACLU interview with Nadir Y. (pseudonym used upon request), Irving, TX, August 6, 2008.
- 564 ACLU interview with Abdullah Mikail MacKay, Dallas, TX, August 3, 2008.
- 565 ACLU telephone interview with Ibrahim Warde, Medford, MA, April 10, 2009.
- 566 Warde, *THE PRICE OF FEAR*, *supra* note 134, at 147.
- 567 ACLU interview with Malika B. (pseudonym used upon request), Richardson, TX, August 5, 2008.
- 568 U.S. Dep't of State Office of Counterterrorism, FOREIGN TERRORIST ORGANIZATIONS FACT SHEET (2005).
- 569 ACLU telephone interview with Ibrahim Warde, Medford, MA, April 10, 2009.
- 570 *Id.*
- 571 See, e.g., OMB Watch and Grantmakers without Borders, *supra* note 27, at 51-60; Ahilan T. Arulanantham, "A Hungry Child Knows No Politics: A Proposal for Reform of the Laws Governing Humanitarian Relief and 'Material Support' of Terrorism," AMERICAN CONSTITUTION SOCIETY, at 6-7 (2008), available at <http://www.acslaw.org/files/Arulanantham%20Issue%20Brief.pdf>. [hereinafter *A Hungry Child Knows No Politics*]; Crimm, *supra* note 116; Stephanie Strom, *Small Charities Abroad Feel Pinch of U.S. War on Terror*, N.Y. TIMES, Aug. 5, 2003, at A8.
- 572 Brief for Grantmakers Without Borders et al. as Amici Curiae Supporting Plaintiffs, *KindHearts for Charitable Humanitarian Development, Inc. v. Paulson et al.*, No. 3:08-cv-2400 (N.D. Ohio 2009), available at http://www.aclu.org/pdfs/safefree/kindhearts_amicus.pdf.
- 573 Brief for American Civil Liberties Union et al. as Amici Curiae Supporting Plaintiffs-Appellees, *Humanitarian Law Project et al. v. Gonzales*, 380 F. Supp. 2d 1134 Nos. 05-56753, 05-56846 (9th Cir. 2006), available at http://www.aclu.org/images/general/asset_upload_file394_25628.pdf.
- 574 ACLU interview with Haneen A. (pseudonym used upon request), Richardson, TX, August 5, 2008.
- 575 *Implementation of the USA Patriot Act: Prohibition of Material Support Under Sections 805 of the USA Patriot Act and 6603 of the Intelligence Reform and Terrorism Prevention Act of 2004*, Hearing Before the H. Subcomm. on Crime, Terrorism

and Homeland Security of the H. Comm. on the Judiciary, 109th Cong. 23-28 (2005) (hereinafter *Implementation of the USA Patriot Act*) (Written statement of Ahilan T. Arulanantham, Staff Attorney, ACLU of Southern California), available at <http://www.aclu.org/safefree/general/17536leg20050510.html>; see also, Ahilan T. Arulanantham, *A Hungry Child Knows No Politics*, *supra* note 571.

576 *Implementation of the USA Patriot Act*, *supra* note 575.

577 See *Humanitarian Law Project*, 380 F. Supp. 2d 1134.

578 ACLU telephone interview with [name withheld upon request], former Department of Treasury official, Washington, DC, April 8, 2009.

579 See, e.g., U.S. Agency for International Development, *GUIDE TO THE DRIVERS OF VIOLENT EXTREMISM*, forthcoming; International Crisis Group, Elisabeth Kvitashvili and Thomas Baltazar, *COMBATING TERRORISM: THE ROLE OF USAID AND DEVELOPMENT ASSISTANCE*, USAID, Apr. 1, 2007.

580 National Commission on Terrorist Attacks upon the United States, *supra* note 4, at 278-79.

581 R.T. Naylor, *SATANIC PURSES: MONEY, MYTH, AND MISINFORMATION IN THE War on TERROR* 163 (2006); Warde, *THE PRICE OF FEAR*, *supra* note 134, at 102.

582 Donald G. McNeil, Jr., *How Blocking Assets Erased a Wisp of Prosperity*, N.Y. TIMES, Apr. 13, 2002; Warde, *THE PRICE OF FEAR*, *supra* note 134, at 102.

583 Hassan Barise, *War on Terror Hits Somali Orphans*, BBC NEWS, May 20, 2003; Adrian Blomfield, *Orphans of Somali Lose Their Home in War on Terrorism*, TELEGRAPH, Feb. 27, 2004; United Nations Office for the Coordination of Humanitarian Efforts, *Somalia: Orphans Facing Street Life After Saudi NGO Pulls Out*, INTEGRATED REGIONAL INFORMATION NETWORK, May 21, 2003.

584 See, e.g., World Bank, *CONFLICT IN SOMALIA: DRIVERS AND DYNAMICS* (2005).

585 National Commission on Terrorist Attacks upon the United States, *supra* note 4, at 82-83.

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

587 ACLU interview with Azhar Azeez, Plano, TX, August 1, 2008.

588 ACLU interview with Abdul C. (pseudonym used upon request), Plano, TX, August 1, 2008.

589 Remarks to the Turkish Parliament, *supra* note 22.

590 International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 UN GAOR Supp. (No. 16) at 52, UN Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, ratified by the United States June 8, 1992, (hereinafter ICCPR), art. 18(1)-(2).

591 See Gunn, *supra* note 24, at 19.

592 Universal Declaration of Human Rights (UDHR), adopted December 10, 1948, G.A. Res. 217A(III), UN Doc. A/810 at 71 (1948), (hereinafter UDHR), art. 18 ("Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.")

593 American Convention on Human Rights, O.A.S. Treaty Series No. 36, 1144 U.N.T.S. 123, entered into force July 18, 1978, *reprinted in* Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 25 (1992), (hereinafter American Convention on Human Rights), art. 12(1).

594 UN Human Rights Committee General Comment 22 on the Right to Freedom of Religion, Article 18, adopted July 20, 1993 (Forty-eighth session, 1993), UN Doc. CCPR/C/21/Rev.1/Add.4 (1993), *reprinted in* Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc. HRI/GEN/1/Rev.6 at 155 (2003), (hereinafter UN Human Rights Committee General Comment 22), ("Article 18...does not permit any limitations whatsoever on the freedom of thought and conscience or on the freedom to have or adopt a religion or belief of one's choice. These freedoms are protected unconditionally.")

595 ICCPR, *supra* note 590, art. 18(3).

596 UN Human Rights Committee General Comment 22, *supra* note 594, para. 8 ("In interpreting the scope of permissible limitation clauses, States parties should proceed from the need to protect the rights guaranteed under the Covenant, including the right to equality and non-discrimination on all grounds.... [P]aragraph 3 of article 18 is to be strictly interpreted: restrictions are not allowed on grounds not specified there, even if they would be allowed as restrictions to other

rights protected in the Covenant, such as national security. Limitations may be applied only for those purposes for which they were prescribed and must be directly related and proportionate to the specific need on which they are predicated. Restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner.”)

- 597 UN General Assembly Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, adopted Nov. 25, 1981, UN Doc. A/RES/36/55 (1981), art. 6(b), (f) (stating that the right to freedom of thought, conscience, religion or belief includes freedom to “establish and maintain appropriate charitable or humanitarian institutions” and “solicit and receive voluntary financial and other contributions from individuals and institutions”).
- 598 UN Human Rights Committee General Comment 22, *supra* note 594, para. 4.
- 599 UN Human Rights Council, Report of the Special Rapporteur on Freedom of Religion and Belief, Dr. Asma Jahangir, UN Doc. A/HRC/6/5 (2007), July 20, 2007, para. 21.
- 600 *W. Va. Bd. of Ed. v. Barnette*, 319 U.S. 624, 642 (1943).
- 601 *Cantwell v. Connecticut*, 310 U.S. 296, 304 (1940).
- 602 Although Congress originally drafted RFRA to apply to both state and federal government action, the Supreme Court held in *City of Boerne v. Flores*, 521 U.S. 507 (1997), that the statute exceeded Congressional power as applied to the states. RFRA now applies only to federal government action.
- 603 42 U.S.C. § 2000bb-1(a).
- 604 *Id.* § 2000bb-1(b)(1)-(2).
- 605 International Religious Freedom Act of 1998, 22 U.S.C. § 6401(a)(2)-(3)
- 606 International Convention on the Elimination of All Forms of Racial Discrimination (CERD), adopted December 21, 1965, G.A. Res. 2106 (XX), annex, 20 UN GAOR Supp. (No. 14) at 47, UN Doc. A/6014 (1966), 660 U.N.T.S. 195, entered into force January 4, 1969, ratified by the United States October 21, 1994, (hereinafter CERD), art. 5(d)(vii).
- 607 *Id.* at art. 1(1)
- 608 Committee on the Elimination of Racial Discrimination, General Recommendation 31 on the Prevention of Racial Discrimination in the Administration and Functioning of the Criminal Justice System, UN Doc. CERD/C/GC/31/Rev.4 (2005), para. 4(b)
- 609 UN General Assembly Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, *supra* note 597, art. 4.
- 610 UN General Assembly Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, Resolution 47/135, adopted Dec. 18, 2002, UN Doc. A/RES/47/135 (1992).
- 611 UDHR, *supra* note 592, art. 20(1).
- 612 ICCPR, *supra* note 590, art. 21, 22(1).
- 613 *Id.* at art. 21, 22(2)
- 614 American Convention on Human Rights, *supra* note 593, art. 16(1).
- 615 *Id.* at art. 16(2).
- 616 The American Declaration of the Rights and Duties of Man is not a binding treaty, but is enforceable on member states of the American system. Laurence R. Helfer, *Overlegalizing Human Rights: International Relations Theory and the Commonwealth Caribbean Backlash against Human Rights Regimes*, 102 COLUM. L. REV. 1832, 1885 (2002).
- 617 General Assembly Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, G.A. res.53/144, annex, 53 U.N. GAOR Supp., UN Doc. A/RES/53/144 (1999), art. 5.
- 618 UN Human Rights Committee General Comment 23, The Rights of Minorities (art. 27), UN Doc. CCPR/C/21/Rev.1/Add.5 (1994), para. 5(2).
- 619 UN Human Rights Council, Report of the Special Rapporteur on Freedom of Religion and Belief, Dr. Asma Jahangir, UN Doc. A/HRC/2/3, Sept. 20, 2006, para. 41.
- 620 *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 460 (1958).
- 621 *See Roberts v. U.S. Jaycees*, 468 U.S. 609, 618 (1984).

- 622 *Id.* at 622 [citing *NAACP v. Claiborne Hardware Co.*, 458 U.S. 86, 907-09, 932-33 (1982); *Larson v. Valente*, 456 U.S. 228, 244-46 (1982); *In re Primus*, 436 U.S. 412, 426 (1978); *Abood v. Detroit Bd. of Ed.*, 431 U.S. 209, 231 (1977)].
- 623 *Roberts*, 468 U.S. at 622.
- 624 *NAACP*, 357 U.S. 449; 78 S. Ct. 1163, 2 L. Ed. 2d 1488 (1958).
- 625 See e.g., *FEC v. Colorado Republican Fed. Campaign Comm.*, 533 U.S. 431, 440 (2001); *Buckley v. Valeo*, 424 U.S. 1, 16 (1976).
- 626 See *McConnell v. Fed. Election Comm'n*, 540 U.S. 93, 143 (2003); *U.S. v. Afshari*, 446 F.3d 915, 921 (9th Cir. 2006).
- 627 UN Security Council Resolution 1456, UN Doc. S/RES/1456 (2003), para. 6.
- 628 UN General Assembly Resolution 58/187, Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, UN Doc. A/RES/58/187 (2004) (“States must ensure that any measure taken to combat terrorism complies with their obligations under international law, in particular international human rights, refugee and humanitarian law [and] raise awareness about the importance of these obligations among national authorities involved in combating terrorism.”); UN General Assembly Resolution 60/158, Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, UN Doc. A/RES/60/158 (2006); UN General Assembly Resolution 62/159, Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, UN Doc. A/C.3/62/L.47/Rev.1 (2007).
- 629 Commission on Human Rights Resolution 2003/68, Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, chap. XVII, UN Doc. E/CN.4/2003/L.11/Add.7 (2003); Commission on Human Rights Resolution 2004/87, Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, UN Doc. E/CN.4/RES/2004/87 (2004); Commission on Human Rights Resolution 2005/80, Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, chap. XVII, UN Doc. E/CN.4/2005/L.10/Add.17 (2005).
- 630 Commission on Human Rights Resolution 2003/37, Human Rights and Terrorism, chap. XI, UN Doc. E/CN.4/2003/L.11/Add.4 (2003).
- 631 UN Security Council Resolution 1566, UN Doc. S/Res/1566 (2004) (“Reminding States that they must ensure that any measures taken to combat terrorism comply with all their obligations under international law, and should adopt such measures in accordance with international law, in particular international human rights, refugee, and humanitarian law”).
- 632 CERD Committee Statement on Racial Discrimination and Measures to Combat Terrorism, UN Doc. A/57/18 (Chapter XI)(C.) (2002), Jan. 11, 2002, para. 3.
- 633 *Id.* at para. 5.
- 634 CERD Committee General Recommendation 30 on Discrimination against Non-Citizens, adopted Jan. 10, 2004, UN Doc. CERD/C/64/Misc.11/rev.3 (2004).
- 635 Scheinin, *supra* note 66, at para. 65.
- 636 *Id.* at para. 41.
- 637 *Id.* at para. 64.
- 638 Eminent Jurists Panel on Terrorism, Counter-Terrorism and Human Rights, International Commission of Jurists (ICJ), *Assessing the Damage, Urging Action* 134, Feb. 16, 2009.



U.S. terrorism financing laws expanded after September 11, 2001 provide executive branch officials with virtually unchecked power to designate charities as terrorist organizations and seize all their assets, effectively shutting them down. Today, terrorism financing laws are overly broad and lack procedural safeguards that would protect American charities against government mistake and abuse. These laws authorize executive branch officials to target groups on the basis of secret evidence and without notice, charges, opportunity to respond, or meaningful judicial review. The federal government's enforcement of these laws has disproportionately affected Muslim charities: nine American Muslim charities located in Texas, Michigan, Missouri, Illinois, Oregon, Ohio, Massachusetts, and New York have closed as a result of government action or investigation.

Despite the often weak nature of the evidence, the Bush administration publicly trumpeted its actions as successes and made inflammatory and unfounded or exaggerated allegations when it designated Muslim charities, indicted them criminally, or raided them. These government actions have created a general climate in which law-abiding American Muslims fear making charitable donations in accordance with their religious beliefs. Other specific federal law enforcement practices, including widespread interviews of Muslim donors about their donations without evidence of wrongdoing, also intimidate American Muslims and discourage them from making charitable donations. The government's actions have chilled American Muslims' free and full exercise of their religion through charitable giving, or Zakat, one of the core "five pillars" of Islam and a religious obligation for all observant Muslims.

This report documents the effect of U.S. government actions on American Muslims' exercise of their right to profess and practice their religion through charitable giving. The ACLU's research shows that U.S. terrorism financing policies and practices are seriously undermining American Muslims' protected constitutional liberties and violating their fundamental human rights to freedom of religion, freedom of association, and freedom from discrimination. Further, the ACLU found that these policies and practices are neither fair nor effective, and are undermining American values of due process and fairness. This report outlines clear measures the Obama administration and Congress should take to ensure American Muslims can exercise their religion while protecting charities from mistaken targeting and abuse, and simultaneously promoting national security and humanitarian aid.