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American Muslim Charities: Easy Targets in the War on Terror

Laila Al-Marayati¹

Within three months of the terrorist attacks on September 11, 2001, President Bush announced the designation of the Holy Land Foundation based in Dallas, Texas as a terrorist organization.² He made this announcement at a press conference in the Rose Garden four days after a request from Israeli Prime Minister Ariel Sharon.³ Since then, three other Muslim charities based in the U.S. were similarly designated, their assets frozen and their operations completely disrupted.⁴ The U.S. government has not obtained a single terrorist conviction of any of the principals of these organizations nor has the government proven conclusively that any of the funds were used to finance activities at all related to the events of 9/11 or to al-Qaeda. Yet, the government continues to display its closures of Muslim charities as evidence of progress being made in the War on Terror. These actions raise numerous questions that seriously affect the rights of Americans both to engage in charitable giving and to know that their government's efforts directly result in the increased safety and security of the American people.

Charitable Giving in Islam

Reliable data on charitable giving trends among American Muslims is non-existent. However, the tradition of charity, referred to in Islam as

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2. Mike Allen & Steven Mufson, *U.S. Seizes Assets of 3 Islamic Groups; U.S. Charity Among Institutions Accused of Funding Hamas*, WASH. POST, Dec. 15, 2001, at A1.

3. *Id.* According to the article, "Administration officials said that during an Oval Office meeting on Sunday, Israeli Prime Minister Ariel Sharon asked Bush to move against the Holy Land Foundation, and the president speedily obliged. 'We—bam—did it,' a senior official said." *Id.*

4. *Id.*

Zakat, is well-established as it is one of the five pillars of faith for Muslims and thus a religious obligation. The Qur'an describes the recipients of those who qualify as beneficiaries in the following manner:

The offerings given for the sake of God are (meant) only for the poor and the needy, and those who are in charge thereof, and those whose hearts are to be won over, and for the freeing of human beings from bondage, and (for) those who are over-burdened with debts, and (for every struggle) in God's cause, and (for) the wayfarer: (this is) an ordinance from God - and God is all-knowing, wise. (9:60)

They will ask thee as to what they should spend on others. Say: "Whatever of your wealth you spend shall (first) be for your parents, and for the near of kin, and the orphans, and the needy, and the wayfarer; and whatever good you do, verily, God has full knowledge thereof. (2:215)⁵

Therefore, at the peak times of giving, such as at the end of the month of fasting (Ramadan), Muslims the world over are keen to pay their alms to the poorest of the poor, neediest of the needy, especially among their brethren, considering the fact that many of the world's destitute are Muslims. Muslim American charities appeal to this urge with orphan sponsorship programs, food programs especially during the month of Ramadan, disaster relief and basic provisions of health care and education. Recently, more organizations are working on sustainable development projects that can have more long term effects on improving the lives of those in greatest need.

Government Tools Available in Targeting American Muslim Charities

Under the International Emergency Economic Powers Act (IEEPA), the government can block the assets of entities suspected of providing material and other support for terrorism (other than medicine or religious materials such as Bibles).⁶ Executive Order 13224, issued by President Bush on September 23, 2001 "prohibits U.S. persons from transacting or dealing with individuals and entities owned or controlled by, acting for or on behalf of, assisting or supporting, or otherwise associated with, persons listed in the Executive Order."⁷ Those designated and listed under the Executive Order are known as 'Specially Designated Global

5. MUHAMMAD ASAD, *THE MESSAGE OF THE QUR'AN* (1954), available at <http://www.geocities.com/masad02/002c>.

6. 50 U.S.C. § 1701 (2000).

7. Exec. Order No. 13,224, 66 Fed. Reg. 49,079 (Sept. 23, 2001).

Terrorists' (SDGTs).⁸

At a hearing before the House Financial Services Subcommittee on Oversight and Investigations, Richard Newcomb, then Director of the Office of Foreign Assets Control (OFAC) best explained the tools at the Treasury Department's disposal in the aftermath of 9/11/2001:

The USA PATRIOT Act of 2001 has enhanced OFAC's ability to implement sanctions and to coordinate with other agencies by clarifying OFAC's authorities to block assets of suspect entities prior to a formal designation in 'aid of an investigation.' In addition, the PATRIOT Act explicitly authorizes submission of classified information to a court, *in camera* and *ex parte*, upon a legal challenge to a designation. This new PATRIOT Act authority has greatly enhanced our ability to make and defend designations by making it absolutely clear that OFAC may use classified information in making designations *without turning the material over to an entity or individual that challenges its designation*.

Changes in the law have greatly enhanced the Department's ability to target and disable organizations and individuals based primarily on suspicion and not on proven evidence of wrong doing as would be required in a court of law for a conviction of terrorism. Apparently, officials at the Treasury and Justice Departments unanimously agree on the usefulness of these changes and look forward to additional enhancements in the future.¹⁰

In the cases of the two Illinois based charities below, OFAC was able to freeze their assets during the "pendency of an investigation" which was made possible by provisions from the Patriot Act. According

8. *Oversight of the Department of the Treasury: Hearing Before the House Fin. Servs. Subcomm. on Oversight & Investigations*, 108th Cong. 42-46 (2004) (testimony of R. Richard Newcomb, Director, Office of Foreign Assets Control, U.S. Department of the Treasury), available at <http://financialservices.house.gov/hearings.asp?formmode=detail&hearing=311> (last visited May 18, 2005).

9. *Id.* (emphasis added).

10. See the following testimonies: Juan Carlos Zarate, Assistant Secretary, Terrorist Financing and Financial Crimes, testimony before the House Financial Services Subcommittees on Domestic and International Monetary Policy, Trade and Technology and Oversight and Investigations (Sept. 30, 2004) (transcript available at <http://www.treas.gov/press/releases/js1971.htm>); Stuart A. Levey, Under Secretary of Terrorism and Financial Intelligence, testimony before the Committee on Financial Services (Aug. 23, 2004) (transcript available at <http://www.treas.gov/press/releases/js1869.htm>); and Barry Sabin, Chief, Counterterrorism Section, Criminal Division, Department of Justice, statement before the Committee on Financial Services (Aug. 23, 2004) (transcript available at <http://financialservices.house.gov/media/pdf/082304bs.pdf>) (last visited May 18, 2005).

to the Monograph on Terrorist Financing presented to the National Commission on Terrorist Attacks upon the United States in August 2004,

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* (emphasis added).

The administrative record needed to justify a designation can include newspaper articles and other hearsay normally deemed too unreliable for a court of law. 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.¹¹

Closures of Muslim American Charities

Holy Land Foundation

Based in Dallas, Texas, the Holy Land Foundation (HLF) was the largest Muslim American humanitarian organization providing assistance overseas with a budget of close to \$12 million per year. HLF provided services in the West Bank and Gaza Strip, Kosovo, Chechnya and elsewhere. To the average Muslim living in the US, HLF was a trusted name. On December 4, 2001, HLF was designated under IEEPA as a terrorist organization because, the government alleged, they were providing assistance to Hamas in the Occupied Territories. The case of HLF continues with the recent arrests and indictments of several board members and employees of the organization, all of whom were not required to post bail and who currently are awaiting their trial to begin in the fall of 2005.

The case against HLF is mainly built around allegations related to

11. JOHN ROTH ET AL., NAT'L COMM'N ON TERRORIST ATTACKS UPON THE UNITED STATES, MONOGRAPH ON TERRORIST FINANCING (2004), available at http://www.9-11commission.gov/staff_statements/911_TerrFin_Monograph.pdf [hereinafter MONOGRAPH ON TERRORIST FINANCING].

financing charitable works that had supposed links to members of Hamas. The current indictments primarily revolve around donations to various Zakat Committees throughout the West Bank and Gaza which are comprised of members of the local Palestinian community and include individuals of various sociopolitical affiliations. Other non-Muslim organizations in the U.S. and elsewhere also fund projects through the Zakat committees because they provide an efficient means of disbursing assistance to the local groups most suited for the humanitarian projects at hand. Yet, no other organization has been targeted for working with the Zakat committees besides HLF. None of the court cases to date appears to document an actual money trail of funds going from HLF to individuals or organizations resulting in actual terrorist activity.

Once HLF was so designated and its assets were frozen, the organization challenged the designation, lost and then appealed to the D.C. Circuit Court of Appeals where they lost again.¹² Finally, the Supreme Court refused to hear their case.¹³ Based on these cases, the judge who is adjudicating the suit filed by the Boim family against HLF, feels there is ample evidence to support the allegation that HLF funded terrorism which will result in a substantial financial award to the plaintiffs who are citizens of Israel as well as the U.S. (see below).

Global Relief Foundation (GRF)

Based in Illinois, GRF was the second largest American Muslim charity doing international work in Bosnia, Afghanistan, Kashmir, Chechnya and Lebanon. On December 14, 2001, GRF was designated by the Treasury department as a terrorist organization and its operations were shut down due to the freezing of its assets. While the government's actions were upheld in court, no charges of terrorism were filed against any individuals. The main fund-raiser for GRF, Rabi Haddad, underwent closed deportation hearings due to supposed immigration violations. He was deported to Lebanon the following year where he lives as a free citizen of that country and all charges against him related to terrorism were dropped.

12. Holyland Found. v. Ashcroft, 333 F.3d 156 (D.C. Cir. 2003).

13. Holyland Found. v. Ashcroft, 540 U.S. 1218 (2004).

Benevolence International Foundation (BIF)

Also based in Illinois, BIF was designated on December 14, 2001 along with GRF. The efforts of BIF were concentrated in Bosnia and elsewhere. Eighteen months prior to the designation, BIF had begun to work in the Occupied Territories. The government's case was enhanced when they obtained documents in Bosnia linking leaders of BIF to Osama bin Laden during the late 1980's when the U.S. government and military were actively supporting bin Laden and the *mujahideen* against the Soviets in Afghanistan. During the criminal case, the government never provided evidence that BIF funded al-Qaeda. The case was built around previous associations that occurred ten years prior to the designation. Ultimately, Enam Arnaout, the executive director, entered into a plea bargain whereby he admitted to using some funds to provide boots and blankets to Chechen and Bosnian fighters. In this case, the government did reveal that the funds were not being used according to the donors' wishes, which is fortunate, but again, no links to terrorism were ever proven. In fact, "the court held that the offense to which Arnaout pled guilty, racketeering conspiracy, was not a crime of terrorism defined by law," and that the government was unable to prove that the Bosnian and Chechen beneficiaries were involved in any acts that could be considered terrorism.¹⁴

Despite this fact, officials of the Treasury Department refer to BIF as having links to bin Laden in direct contradiction to the final judgment issued by the court.¹⁵ For example, in March 2003, Juan Zarate, Deputy Assistant Secretary in the Office of Terrorist Financing and Financial Crime, claimed that the designation of BIF, "a Chicago-based charity that was supporting al-Qaida" was an "example of the international community taking common action to cut off the flow of funds to al-Qaida."¹⁶ His testimony referred to BIF as a supporter of terrorism despite the fact that the case to prove such allegations was still pending in court. Ultimately, the government dismissed all charges that BIF and Arnaout provided material support to any terrorist individuals or

14. MONOGRAPH ON TERRORIST FINANCING, *supra* note 11, at 108-09.

15. *Id.* at 108.

16. *Diplomacy and the War on Terrorism: Hearing Before the Senate Comm. on Foreign Relations*, 108th Cong. (2003) (testimony of Juan C. Zarate, Deputy Assistant Secretary, Executive Office, Terrorist Financing and Financial Crime, U.S. Department of Treasury), available at <http://foreign.senate.gov/testimony/2003/ZarateTestimony030318.pdf> (last visited May 18, 2005).

organizations.¹⁷

Islamic American Relief Agency (IARA)

At the beginning of Ramadan in 2004, the U.S. Government announced the designation of IARA as a terrorist organization under IEEPA.¹⁸ IARA is based in Missouri and focuses its efforts primarily in Africa. The allegations are related to supposed connections between IARA in the U.S. and the Islamic African Relief Agency in Sudan and include alleged connections to Hamas. No criminal charges have been filed against any individuals affiliated with IARA here in the US. According to personal correspondence, it appears that at the time of the designation, IARA was a member in good standing of InterAction, an umbrella group that requires its affiliated organization “to ascribe to InterAction’s Private Voluntary Standards that help assure accountability in critical areas of financial management, fundraising, governance and program performance.”¹⁹ Similarly, “the Better Business Bureau of Eastern Missouri and Southern Illinois found the group met 22 of its 23 standards for charitable giving.”²⁰

According to the Staff Monograph on Terrorist Financing to the 9/11 Commission cited earlier, much of the evidence used against these groups in the terrorist designation process has been based on hearsay, media reports, documents collected in trash bins, and secret evidence. In addition, the cases of BIF and GRF “highlight fundamental issues that span all aspects of the government efforts to combat al Qaeda financing: the difference between seeing links to terrorists and proving funding of terrorists, and the problem of defining the threshold of information necessary to take disruptive action.”²¹

17. MONOGRAPH ON TERRORIST FINANCING, *supra* note 11 at 108-09.

18. Press Release, U.S. Dep’t of Treasury, Office of Public Affairs, Treasury Designates Global Network, Senior Officials of IARA for Supporting bin Laden, Others (Oct. 13, 2004), *available at* <http://www.ustreas.gov/press/releases/js2025.htm>.

19. See InterAction’s Private Voluntary Organization (PVO) Standards, *at* <http://www.interaction.org/pvostandards/index.html> (June 2001).

20. Mike Wells, *Islamic Charity Seeks Release of Some Frozen Assets*, COLUM. DAILY TRIB., Nov. 9, 2004, *available at* <http://archive.columbiatribune.com/2004/nov/20041109news007.asp> (last visited Mar. 22, 2005).

21. MONOGRAPH ON TERRORIST FINANCING, *supra* note 11, at 11. For a quick summary of the Monograph’s findings and critique of U.S. government policy, see David B. Ottaway, *Groups, US Battle Over ‘Global Terrorist’ Label*, WASH. POST, Nov. 14, 2004, at A1.

Consequences on Muslim Charitable Giving

Through the Treasury Department, the U.S. Government is able to freeze the assets of any organization before actually charging any individuals with engaging in terrorism or the support thereof.²² In addition, the Treasury Department is not obliged to prove its case in a court of law unless the targeted organization challenges the designation with the Treasury Department itself.²³ Once the assets are frozen and the community becomes aware that an organization is under investigation, even if the accusation has no merit, the damage is irreversible resulting in the demise of the enterprise. Despite the fact that the government has not been able to show in any of the cases to date that funds were used to directly finance and support terrorism, all of the groups now are completely defunct.

Few have ventured to fill the void, meaning that only a small number of Muslim American groups remain that provide humanitarian assistance abroad. Prior to these closures, there were fewer than a dozen Islamic organizations based in the U.S. doing charitable work abroad that were known to the community. Only two new organizations have emerged since 9/11. All groups function with the awareness that they can be closed down at any time regardless of any actions they take to remain transparent and function within the law. Despite attempts by the Administration, the Treasury Department and others to reassure American Muslims that neither they nor their institutions are being targeted unfairly, the facts suggest the opposite.

In addition, the government's actions against Muslim American charities have little, if any, impact on making the rest of the American public more secure. Instead, these high profile cases result in the more dangerous consequence of leading people to believe that things are safer when they have made no difference whatsoever despite massive expenditures of taxpayer money.

For many years, Muslims in the United States felt they were fulfilling their religious obligation by giving to groups that provided and those that continue to provide humanitarian assistance overseas in places like Lebanon, Kosovo, Palestine, Africa, South Asia, Chechnya and Afghanistan to name a few. Local and national groups engaging in grass roots issues such as civil liberties protection had to sell the idea that

22. Exec. Order No. 13,224, 66 Fed. Reg. 49,079 (Sept. 23, 2001).

23. *Id.*

donating to those efforts also qualified as *zakat*. Now that the community's choice of groups providing humanitarian assistance internationally continues to dry up, many have diverted their giving to focus on community based activities in the U.S.²⁴ In addition, fear of being placed on a "government list" for donating to a charity that is suspect, negatively affects giving patterns as well. As a result, the yet-to-be-documented trends in giving among American Muslims are likely undergoing tremendous shifts.

The Treasury Department and the American Muslim Community

At the start of Ramadan in 2004, the Secretary of Treasury issued a "Ramadan" statement, cautioning Muslims against giving to questionable groups: "When you open your hearts to charity during Ramadan, we encourage you to educate yourself on the activities of the charities to which you donate, to help ensure that your generosity is not exploited for nefarious purposes."²⁵ He included the list of twenty-seven groups that have been so designated by the U.S. Government for supporting terrorism and noted that it is a crime to support them in any fashion.²⁶

The government appears to function under the basic assumption that charitable donations on behalf of Muslims have been and will be corrupted intentionally or unintentionally and therefore, all acts of Muslim giving overseas are suspect. To date, the government has not been able to demonstrate a "money trail" that would confirm unequivocally the allegation that American Muslim charitable funds have been used to finance terrorism. However, the cloud of suspicion continues to grow despite modest efforts on the part of the Treasury Department and other branches of government to convince the community otherwise.

24. Numerous press reports address this issue. See, e.g., Laurie Goodstein, *Since 9/11, Muslims Look Closer to Home*, N.Y. TIMES, Nov. 15, 2004, at F1; Mike Wells, *Raids Complicate Donating: Some Muslims Fear Guilt by Association*, COLUM. DAILY TRIB., Oct. 15, 2004, available at <http://archive.columbiatribune.com/2004/oct/20041015news003.asp> (last visited Mar. 23, 2005); Michael H. Hodges, *Government Hinders, but Doesn't Stop Faithful Muslim from Giving During Ramadan*, THE DETROIT NEWS, Nov. 5, 2004, at 1B.

25. John W. Snow, *Charitable Giving During Ramadan*, Remarks Regarding the Sanctity of Charitable Giving During Ramadan (Oct. 19, 2004) (transcript available at <http://www.treas.gov/press/releases/js2041.htm>).

26. *Id.*

The Treasury Department Issues Voluntary Best Practices Guidelines

The Treasury Department has engaged with the Muslim community on a variety of levels since they began their efforts to interdict funds directed at terrorist groups.

In 2002, the Treasury Department issued Anti-Terrorist Financing Guidelines: Voluntary Best Practices for US-Based Charities²⁷ as a response to demands from the American Muslim community, according to Juan Zarate, during a speech at the Convention of the Muslim Public Affairs Council (MPAC) in December, 2002. The guidelines mainly provide recommendations that mirror most due diligence practices of charitable organizations with a few additions, some of which are cumbersome, impractical and unrealistic.²⁸ For example, the Guidelines advise charities to determine if the financial institution with which the foreign recipient maintains accounts is a shell bank, operating an offshore license, licensed in a jurisdiction that is non-cooperative in the fight against money-laundering, licensed in a jurisdiction where there are inadequate money-laundering controls and oversight, etc.²⁹ Section 4 of the Guidelines outlines these and other measures that would require a great expenditure of resources on the part of the charities, something that would be very difficult, especially for smaller organizations.³⁰ In addition, the areas in greatest need are often the areas that have the least amount of government control and oversight, making it difficult to comply completely with the Guidelines in all circumstances.

At various meetings with the Muslim community, Treasury officials confirmed that complete compliance with the Guidelines does not protect against seizure of assets, closure, government investigations and ultimate designation as an entity supporting terrorism if the government so wills. In other words, full compliance with the Treasury Guidelines does not offer "safe haven" from government action against any group.

Muslim Umbrella Group

Shortly after the Guidelines were issued, the Treasury Department

27. U.S. Department of Treasury Anti-Terrorist Financing Guidelines: Voluntary Best Practices for U.S.-Based Charities, at <http://www.treas.gov/press/releases/reports/po36072.pdf> (last visited Mar. 31, 2005).

28. *Id.*

29. *Id.*

30. *Id.* at § 4.

began to meet with Muslim groups, such as the Islamic Society of North America (ISNA) and MPAC, for what Treasury considered to be the “next step” in providing guidance with respect to charitable giving. Treasury sponsored a gathering that included individuals from the Better Business Bureau’s Wise Giving Alliance and the Evangelical Council on Financial Accountability to encourage Muslims to follow their models in forming an umbrella group under the auspices of an organization like ISNA which ultimately would provide some sort of “seal of approval” for member groups. At ISNA’s annual convention in Chicago in the fall of 2004, the representatives of Muslim charities doing work in the U.S. and abroad raised concerns about which groups could best lead this effort and questioned whether Muslims needed to organize separately in the first place.

The major question raised was, what could a separate Muslim umbrella organization offer that was not already being provided by more experienced, well-established groups, such as InterAction? At the meeting, the representative from the Treasury Department replied that “you have some things on your radar screen that we don’t.” Such a statement is open to various interpretations but, at a minimum, was not reassuring. When pressed about the role of Treasury in facilitating a process that would enable Muslims to give without worry, he acknowledged that the Treasury Department emphasizes investigation and enforcement, not facilitation.

Most importantly, however, is the fact that an umbrella organization that vets groups and issues a “seal of approval” does not give American Muslims what they want: a guarantee that the group is doing legitimate work from the *American government’s* point of view, that the group is not under investigation by any branch of law enforcement, and that they, as donors, will not be targeted by law enforcement under any future investigation.

After the closure of IARA at the start of Ramadan in 2004, Muslims in New Jersey called upon the government to issue a “white list” of acceptable charities to which they could donate without fear of donating to groups with terrorist ties.³¹ The Justice Department rejected the request stating that it was impossible to fulfill.³² According to Juan

31. See Goodstein, *supra* note 24.

32. Wayne Parry, *U.S. Rejects Pleas for Muslim Charity List*, ASSOC. PRESS, Oct. 18, 2004, available at <http://www.wwrn.org/parse.php?idd=9703&c=55> (last visited May 18, 2005).

Zarate, Assistant Secretary for Terrorist Financing and Financial Crimes at the Treasury Department, "You can't have the U.S. government picking favorites in a multi-billion dollar industry."³³ He also cited market and First Amendment concerns as limitations.³⁴

Denial of Licenses to Transfer Funds

After the assets of HLF were frozen in 2001, Muslim donors expressed a desire to have their money returned or at least be transferred to another group providing similar humanitarian assistance. Once the HLF case was denied a hearing by the Supreme Court, the leaders of the organization agreed to file an application with OFAC for a license to release the funds to another group, namely, the Palestine Children's Relief Fund, a U.S.-based organization providing medical and surgical services to Palestinians. The request was denied due to two lawsuits pending against HLF. The government's refusal to honor the wishes of the donors to have their funds transferred to groups whose record is unscathed again belies the government's claim that it is not interested in obstructing legitimate Muslim giving.

Soon after its assets were frozen, BIF applied for a license from OFAC to release over \$700,000 to fund a Tuberculosis hospital in Tajikistan and a Women's Hospital in Daghestan. Despite evidence of the valid, humanitarian nature of this work, OFAC refused to grant the license because it was concerned that "even funds sent to seemingly legitimate charities can be at least partially diverted to terrorist activities overseas" that OFAC is unable to monitor adequately.³⁵

Donors Funds Awarded to Victims of Terror

In November 2004, a federal judge ruled that HLF, along with several others, as alleged supporters of Hamas, were liable for damages (around \$600 million) as filed by the Boims, an American Israeli family whose son was killed in a terrorist attack in Israel in 1996.

Now that one of the pending cases has been decided in favor of the plaintiff,³⁶ the community's worst fears have been realized. Not only is

33. See Goodstein, *supra* note 24.

34. *Id.*

35. MONOGRAPH ON TERRORIST FINANCING, *supra* note 11, at 101.

36. Boim v. Quranic Literacy Inst., 340 F. Supp. 2d 855 (N.D. Ill. 2004).

their money not reaching the intended recipients, it is being diverted to individuals who actively oppose efforts to help vulnerable Muslim groups, especially among Palestinians. There is no doubt that the families of any victims of murder should be adequately compensated. However, the funds of law-abiding, unwitting donors should not be used for such purposes since they themselves are not part of the lawsuit.

Indeed, attorneys in these cases want even more. In November 2002, a friend and advisor to the Boims, attorney Nathan Lewin, testified before the Senate Judiciary Committee that the seized funds of the designated groups should be made available to the plaintiffs' attorneys in these types of cases if the groups are unsuccessful in their motion to dismiss.³⁷ Similarly, the funds should go to the plaintiffs' attorneys if the plaintiffs prevail at the pretrial stage.³⁸ He argues that the government should share secret evidence with the plaintiffs' (but not defendants') attorneys.³⁹ Finally, he advocates specifically going after donors to charities named in these lawsuits.⁴⁰

While the Boim case goes to appeal, a victory on behalf of the plaintiffs would set a worrisome precedent, especially since the government, so far, has not shown how funds raised by HLF actually got into the hands of a terrorist individual or organization. Without such proof, similar cases can be filed against any organization that some day may be designated as "terrorist" under the vagueness of IEEPA and any subsequent statutes that could emerge in the wake of the Patriot Act.

Political Considerations

The cases against the Muslim charities are based on allegations related to activities that took place years before the current War on Terror began. Yet, the timing of their closure as well as that of high-profile arrests over the past three years clearly demonstrate a pattern on the part of the government designed to give the impression at regular intervals that they are making progress against terrorism, as if each case is a new development. It is true that the removal of the "wall" between

37. *An Assessment of the Tools Needed to Fight the Financing of Terrorism: Hearing Before the Senate Comm. on the Judiciary* (Nov. 20, 2002) (testimony of Nathan Lewin), available at http://judiciary.senate.gov/testimony.cfm?id=519&wit_id=1421 (last visited May 18, 2005).

38. *Id.*

39. *Id.*

40. *Id.*

law enforcement and intelligence (that is, to enable law enforcement to use surveillance information in criminal cases) and other provisions of the Patriot Act have facilitated the actions of the government post 9/11. It doesn't make sense to go after groups or individuals simultaneously if the timing itself can be used to the government's advantage. Also, several of the closures have coincided with the Muslim holy month of Ramadan, when giving is at its peak and therefore the government has the best chance to seize a larger amount of money. Of course, these considerations are denied by government officials, but the average observer cannot be faulted for drawing such conclusions.⁴¹

Despite government allegations at the time of the terrorist designations of American Muslim charities, not a single court case has resulted in a conviction that is related to the events of 9/11 or to al-Qaeda. Nevertheless, during testimony on Capitol Hill, the Treasury Department repeatedly cites the cases of GRF, BIF and HLF as models of success in their efforts to disrupt terrorist financing.⁴² They refer to the loss of appeals by HLF as evidence that the courts uphold and defend the government's position, thus justifying their actions to date. At the same time, they consistently fail to acknowledge in their testimony that there are no terrorist convictions among these cases. At times, Treasury officials contradict the actual rulings in the cases. For example, in his testimony in March 2003, Juan Zarate, stated that BIF was closed for ties to al-Qaeda.⁴³ However, the indictment itself issued against Arnaut in October 2002 "contained almost no specific allegations that BIF funded al-Qaeda."⁴⁴

Concerns that the Government's Actions Target Aid to Palestinians

During the 1990's HLF was under surveillance by Israeli intelligence resulting in the closure of its offices and the arrests of employees in the West Bank and Gaza who were subjected to torture and forced confession. Ultimately, President Bush's decision to designate HLF upon the request of Ariel Sharon reinforced the perception that the assault on one of the major Muslim American charities was carried out as

41. Mike Wells, *Raids Complicate Donating: Some Muslims Fear Guilt by Association*, COLUM. DAILY TRIB., Oct. 15, 2004, available at <http://archive.columbiatribune.com/2004/oct/20041015news003.asp> (last visited Mar. 23, 2005).

42. Exec. Order No. 13,224, 66 Fed. Reg. 49,079 (Sept. 23, 2001).

43. *Id.*

44. MONOGRAPH ON TERRORIST FINANCING, *supra* note 11, at 104.

a favor to the government of Israel and not necessarily as a means of making Americans living in the U.S. safer. Since then, there is a growing perception among American Muslims that Muslim charities that continue to provide aid to Palestinians will be singled out and targeted for investigation and closure, not because of any wrongdoing, but simply because they assist Palestinians. The alleged link of IARA to Hamas and the fact that GRF was targeted months after beginning work in the Occupied Territories contribute to this perception.

Senator Grassley's "List"

In 2003, Senator Chuck Grassley (R-IA), chair of the Senate Finance Committee, issued a press release indicating that the Finance Committee was conducting its own investigation of American Muslim charities and other non-profit organizations potentially involved in diverting funds to terrorism.⁴⁵ In a letter to Mark Everson, Commissioner at the Internal Revenue Service, Grassley wrote that

[m]any of these groups not only enjoy tax-exempt status, but their reputations as charities and foundations often allows them to escape scrutiny, making it easier to hide and move their funds to other groups and individuals who threaten our national security Often these groups are nothing more than shell companies for the same small group of people, moving funds from one charity to the next charity to hide the trail.⁴⁶

The groups named to the list included many well-established community based organizations who did not understand the implications of being targeted in such a way. In addition, the tone and content of his letter suggests that only Muslim organizations are suspect, corruptible and presumed guilty, since no other groups were mentioned in the letter. Since that time, the Senate Finance Committee has not issued a single public statement or held a public hearing indicating further action or interest in this issue. However, the Committee did sponsor a hearing on charitable giving called "Charity Oversight and Reform: Keeping Bad Things from Happening to Good Charities" in June, 2004.⁴⁷ Despite the

45. Press Release, Chuck Grassley, Senator, U.S. Senate Committee on Finance, Records Sought About Tax-Exempt Organizations for Committee's Terror Finance Probe (Jan. 14, 2004), available at <http://finance.senate.gov/press/Gpress/2004/prg011404.pdf> (last visited May 18, 2005).

46. *Id.*

47. See *Charity Oversight and Reform: Keeping Bad Things from Happening to Good Charities: Hearing Before the Senate Comm. On Fin.* 108th Cong. (2004),

widespread attention given to the possible role of American Muslim charities in financing terrorism, no reference was made at that hearing to concerns affecting American Muslims and their charities nor did any individuals involved in charitable giving in the Muslim world testify.

Muslims Singled Out

All of the SDGTs listed by the Treasury Department are Muslim. Despite the fact that numerous other groups provide assistance in high-risk areas throughout the Middle East, Africa and Asia, no non-Muslim charitable organization has been designated as a supporter of terrorism. In view of the fact that no terrorism convictions have resulted from the closures, it appears to many that Muslim groups are singled out because they are Muslim, first and foremost. And, since the government is not obliged to prove its case justifying a designation, mere suspicion of wrongdoing will suffice. The absence of terrorist convictions does not inhibit the government from claiming victory, as long as the "terrorist designations" are upheld in the courts, even if they are based on faulty evidence and lack of due process. As a result of the perceived inequities and injustices, Muslims feel they are singled out based on their religion and that other religious groups, such as Christian organizations, receive preferential treatment, further perpetuating the idea that the government is attacking Islam in general and seeking ways to open up the Muslim world to Christian missionaries. While there may not be any truth to such thinking, the perception in the community is real and has negative repercussions both here and abroad.

The Future

One positive consequence of the increased scrutiny of Muslim charitable organizations is a better understanding on their part of the need for transparency and accountability. In the past, Muslim groups did not publish annual reports, conduct audits or engage in the same kind of oversight that is commonplace among other charitable institutions. This was a result of inexperience as opposed to any devious intentions. But now there is a growing awareness of basic expectations, not only to protect an organization from attack by law enforcement, but mainly to

available at <http://finance.senate.gov/sitepages/hearing062204.htm> (last visited May 18, 2005).

provide assurances to donors that their money is being spent according to their wishes. In addition, this better serves the beneficiaries. In the end, Muslim groups know that being transparent and open might help in mounting an effective legal defense if they are ever targeted by the U.S. government, even though it won't guarantee anything.

Despite concerns about the constitutionality of the use of government "lists" of suspected terrorists, Muslim groups are using them to screen donors, employees and beneficiaries as they are now prone to being more conservative in their efforts to minimize any likelihood that they could be investigated or shut down. Yet the sense of uncertainty remains and is likely to increase in the near future. In addition, only a few new Muslim American humanitarian organizations have emerged since 9/11, meaning that, in this country, fewer than a dozen groups exist that provide assistance abroad on behalf of the American Muslim community.

Muslims are committed to following through with their religious obligations, but not if it means sacrificing their legal status in this country, losing their jobs or their hard-earned money, or becoming the subject of an FBI investigation. The government's efforts have had an effect that impacts the already small contribution of American Muslim giving internationally. Based on the evidence offered to the public to date, one can hardly conclude that the seizure of assets, intimidation of the community, and dwindling opportunities for Muslims to give to Muslim charities that work overseas has had any meaningful effect on the War on Terror.

In fact, these actions may actually make things worse. Muslims around the world pay attention to the treatment of their brethren here in the U.S. Others see how democracy works when American Muslims are able to engage in the full expression of their religious faith, including alms-giving. When American Muslims, through their own institutions, help provide humanitarian assistance to Muslims in need, they help convey a positive image of what it means to be American. While we may be winning by a show of force at this point, the long-term success of U.S. efforts to promote values of freedom, democracy and equality will be thwarted when we target the wrong groups at home simply because of political expediency.

The ever present threat of the "terrorist designation" issued by the Treasury Department functions based on the principle of "guilty until proven innocent." The use of secret evidence, hearsay, erroneous

translations, guilt by association and press reports in recent court cases further erodes the ability of charities to rely on basic assumptions regarding their constitutional rights, especially when the courts ultimately favor the government when “national security” allegedly is at stake. Over-zealous surveillance tactics of the intelligence community such as wiretapping, infiltrating organizations by bribing employees to work as spies (thereby disrupting normal and lawful humanitarian activities), and engaging in other forms of harassment - when added to the above bleak picture - will not only chill, but will freeze completely American Muslim charitable giving overseas. Perhaps this is the goal of the U.S. government. However, no one should be fooled into thinking that America or the American people will be much safer as a result.