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QUESTIONS TO THE PANELISTS FROM CONGRESSMAN KEITH ELLISON

for the

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

Hearing Before the Subcommittee on Oversight and Investigations, House Committee on
Financial Services

May 26, 2010

ANSWERS OF KAY GUINANE, Program Manager of the Charity and Security Network

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1. Should the Treasury Department consider implementing new rules and procedures to assist Muslims contributing to charities?

Answer: Yes.

All donors, whether they are individuals or institutions, would benefit from new rules and procedures. The current lack of clarity about the level of due diligence necessary to comply with the law creates unnecessary uncertainty for all donors. The ACLU has documented the disproportionate impact the current rules and procedures have on Muslim donors in its report *Blocking Faith Freezing Charity*.¹ Interviews of Muslim charity officials I conducted in the fall of 2009 confirmed the ACLU's findings. They told me Treasury officials said individual donors are responsible for conducting investigations into how their contributions are ultimately used, even when the contributions are made to U.S. based charities that have been recognized as tax-exempt by the Internal Revenue Service. Treasury also tells individual donors the same thing it tells institutional donors: no amount of due diligence or good faith investigation will provide any legal protection against government sanctions.

Individual donors should not be required to conduct the kind of thorough due diligence expected of grant makers or grant making organizations, so long as their donations are made to an entity recognized as a 501(c)(3) tax exempt organization by the U.S. Internal Revenue Service or a recognized equivalent under Treas. Reg. 53.4945-6(c)(2)(ii).

In addition, such rules should:

- Ensure that charitable giving, lawful at the time of contribution, is not retroactively penalized.

¹ Jennifer Turner, ACLU, June 16, 2009 online at <http://www.aclu.org/human-rights/report-blocking-faith-freezing-charity>

- Assure donors that if their donations are blocked, seized, or otherwise placed under government control the funds shall only be used towards charitable purposes in accordance with the donors' intent and the mission stated in the organization's charter.
- Protect the privacy of donations, so that personal information is not added to law enforcement or intelligence databases solely on the basis of lawful charitable giving.
- Affirmatively state that government scrutiny of donors is not based, solely or partially, on race, ethnic origin, gender, religion, or protected First Amendment activity.
- Not impute the intent of a donor from the acts, words, or intentions of others.

2. Do you support Treasury directing the creation of a single, user-friendly and publicly accessible database consolidating each of the government's prohibited lists so that donors, mosques and 501(c)(3)s can easily determine if a charity to which they wish to donate is on a prohibited list?

Answer: Only if the integrity of the lists is assured through clear standards for listing and adequate redress procedures for those placed on the lists. As long as the procedures for listing and de-listing remain flawed, making list checking easier only perpetuates the flaws. Because U.S. anti-terrorist programs rely so heavily on lists, and because the penalties for engaging in transactions with listed persons or entities are severe, it is incumbent on the enforcement agencies involved to ensure the integrity of the lists by implementing clear standards and adequate redress procedures.

The Treasury Specially Designated Nationals (SDN) list purports to be a single, comprehensive list,² but it is far from user friendly. It is online in pdf format³ or in a text file.⁴ The listings are alphabetical and the files are not searchable.

A small software industry has grown up around these lists, and special software that costs \$500 to \$1,000 per year is commonly used due to the difficulty and inefficiency of searching the government lists.⁵ Although many nonprofits have expressed skepticism about the effectiveness of the lists in thwarting terrorism and have concerns about the constitutionality of the process, list checking is often seen as the easiest way to comply with the law; 69 percent of respondents in a Grantmakers Without Borders survey engaged in list checking.⁶ That survey also found that none of the organizations surveyed encountered a true hit when list-checking. Instead, false positives used up time and resources investigating a potential

2 The Treasury Department's website says the SDN list is "an integrated and comprehensive list of designated parties with whom U.S. persons are prohibited from providing services or conducting transactions and whose assets are blocked. The names on this list include persons designated under country-based and list-based economic sanctions programs, as well as individuals and entities designated under the various executive orders and statutes aimed at terrorism. Persons designated under E.O. 13224, E.O. 12947, or the AEDPA are included on this integrated and comprehensive list and are called "Specially Designated Global Terrorists" or "SDGTs", "Specially Designated Terrorists" or "SDTs", or "Foreign Terrorist Organizations" or "FTOs", respectively."

http://www.ustreas.gov/offices/enforcement/key-issues/protecting/charities_exec-orders.shtml

³ <http://www.treas.gov/offices/enforcement/ofac/sdn/t11sdn.pdf>

⁴ <http://www.treas.gov/offices/enforcement/ofac/sdn/sdnlist.txt>

⁵ <http://www.mott.org/toolbox/resources/patriotact/resources.aspx>

⁶ Most check both their international grantees and their U.S.-based grantees against the Terrorist Exclusion List maintained by the Secretary of State and the SDGT list maintained by the Office of Foreign Assets Control.

match. This is largely due to the extensive inclusion of common Muslim or Latino names on the SDN list.⁷

Treasury and other U.S. government agencies should prioritize their resources, and rather than spend taxpayer dollars on making flawed lists easier to use, they should concentrate their energies, attention and resources on fixing the listing and de-listing process. Then making the lists easier to use could be a useful and productive step for them to take.

3. Do you support Treasury providing a rebuttable presumption of innocence to donors (individuals, mosques and 501(c)(3)s) who can show that at the time of contribution, they checked the combined list and did not have reason to know that the organization was connected to terrorists or otherwise fraudulent?

Answer: This proposed protection does not go far enough. Since the prohibitions are based on the lists, donors should not be subject to sanctions or criminal charges for giving to a group that was not on the list as of the date of the contribution.

In other words, this should be an affirmative defense, and not a rebuttable presumption. It is difficult to imagine how the government could rebut a presumption of good faith without relying on religious identity, political opinion or association or other First Amendment protected factors.

More reasonable and proportional sanctions for donors who may make errors would also help solve the problems donors currently face. Under current rules the sanctions for making a small, inadvertent donation may be same as for being a terrorist.

The government has undermined the integrity of the lists through its failure to make all suspect groups publicly known. This dilemma came to light in the criminal prosecution of Holy Land Foundation and its leaders, where the prosecution argued that although the zakat committees Holy Land gave to were not designated organizations, the defendants "should have known" they were "otherwise associated" with Hamas.⁸ Treasury confirmed that they do not list all suspect groups in the testimony of Robert McBrien, an official of the Office of Foreign Assets Control (OFAC). He said keeping up with front groups "is a task beyond the wise use of resources." As a result it is impossible for donors to know whether a charity is on Treasury's "secret list."

The standard in the law is that a donor cannot give to a group he or she knows is on the SDN list. Donors should not be held accountable for giving to groups on secret lists, or for Treasury's inability to do its job by putting groups it has found to be supporters of terrorism on the list.

4. The Bush administration shut down 7 charities that served Muslims and prosecuted one. Do you have a view as to whether these steps were appropriate?

Answer: There is insufficient public information for me to assess whether these designations were appropriate. However, the process used to shut charities down, coupled with the lack of meaningful appeal procedures, raises questions about whether it was necessary or appropriate to do so. Without the

⁷ "The OFAC list *How a Treasury Department Terrorist Watchlist Ensnarers Everyday Consumers*," The Lawyers' Committee for Civil Rights of the San Francisco Bay Area (March 2007)
<http://www.lccr.com/03%202007%20OFAC%20Report.pdf>.

⁸ Greg Krikorian, "Mistrial in Holy Land terrorism financing case", *Los Angeles Times* (Oct. 23, 2007).

transparency or accountability provided by adequate due process, the current process used to designate charities lacks public credibility.

What is known about some of the evidence is cause for concern. Criminal trials have required the government to disclose its evidence, providing the general public a glimpse of the kind of evidence Treasury considers when shutting down a charity. This evidence has often been of poor quality, based on substandard intelligence or faulty translations.

The evidence used to designate the Holy Land Foundation is a case in point. In July 2004, Holy Land asked the Department of Justice Inspector General to investigate allegations that the Federal Bureau of Investigation (FBI) used erroneous translations of sensitive Israeli intelligence material as the crux of its designation.⁹ Instead of launching an investigation, the Justice Department indicted Holy Land and its top officials.¹⁰

A June 2006 article in the *Los Angeles Times*¹¹ revealed details of these translation discrepancies. It said the prosecution argued that many of the orphans supported by Holy Land were children of suicide bombers, citing an "orphans book" seized from Holy Land's office. The *Los Angeles Times* review of this document identified 69 of 400 orphans in the book labeled as children of "martyrs." Noting that the term "martyr" is used broadly to include "common accidents and incidents," the article quoted a sworn statement by the former head of Holy Land's Gaza office, who said social workers interviewed all 69 families and found only 4 had immediate family members that died from making bombs. Of the remaining 65 orphans, 12 lost family members to Israeli troops, 8 were killed by Palestinians for allegedly collaborating with Israel, and the remaining 45 were victims of robberies, heart attacks, accidents, and other non-political deaths."

Defense motions filed in February revealed significant discrepancies between transcripts of a 1996 FBI-wiretapped conversation and the official summary: anti-Semitic remarks attributed to Holy Land executive director Shukri Abu Baker in the summary were not in the actual transcripts.

The government was unable to prove support for terrorism when it prosecuted Benevolence International Foundation (BIF). In January 2002 BIF filed suit¹² to contest its designation. In April 2002, the government charged BIF and its executive director with making false statements in their appeal by denying association with al-Qaeda. In February 2003 Judge Suzanne B. Conlon dismissed the charges against BIF,¹³ ruling that the prosecution had "failed to connect the dots" to prove a relationship between BIF, its staff and bin Laden.

To provide further background about concerns on these designations, I have attached a March 2006 report I wrote for OMB Watch: *Muslim Charities and the War on Terror: Top Concerns and Status Update*.

⁹ Eric Lichtblau, "Islamic Charity Says FBI Falsified Evidence Against It", *New York Times* July 27, 2004).

Available at

http://query.nytimes.com/gst/fullpage.html?res=9F0CE6D6153DF934A15754C0A9629C8B63&sec=&spn=&page_wanted=all.

¹⁰ Indictment available online at http://freedomtogive.com/files/HLF_indmt.pdf.

¹¹ Greg Krikorian, "Questions Arise in Case Over Islamic Charity," *Los Angeles Times* (June 18, 2006).

¹² *Benevolence Int'l Found., Inc. v. Ashcroft*, 200 F. Supp. 2d 935 (N.D. Ill. 2002).

¹³ Arnaut pleaded guilty to a lesser charge of fraud, admitting that he led BIF donors to believe funds were being used for humanitarian purposes, but that some funds were diverted to Chechen and Bosnian soldiers. He is currently serving an 11-year sentence. This outcome – holding individual bad actors responsible – makes more sense than punishing the entire organization.

5. My understanding is that one of the charities, KindHearts, had its assets frozen in 2006 without a warrant and without probable cause. A federal judge ruled recently that this was improper. Could you please comment?

Answer: Judge James Carr of the Federal District Court for the Northern District of Ohio, in a 100 page opinion, set out the constitutional basis for requiring a warrant based on probable cause before a charity's funds can be seized (frozen) by Treasury. In doing so he brought the economic embargo sanctions scheme, originally intended to be directed at nation states, into a framework that can be constitutionally applied to U.S. citizens and organizations.

Treasury's sanctions powers are based on Executive Order 13224, which draws its authority from the International Emergency Economic Powers Act (IEEPA). The law was written to authorize the executive branch to impose sanctions against foreign nations, and the asset blocking powers were intended to create negotiating leverage in the conduct of U.S. foreign policy.

This statutory scheme was expanded to apply to non-state terrorist organizations and individuals interfering with the Middle East peace process during the Clinton administration in Executive Order 12947 and further expanded in Executive Order 13224 to apply to Specially Designated Global Terrorists.

Once they are shut down, U.S. charities have no leverage for negotiating with the government for release of their assets. Judge Carr recognized that designation and asset blocking "has effectively shut KindHearts down." He said "nothing in our Fourth Amendment jurisprudence or constitutional tradition supports complete elimination of the probable cause, prior judicial review and warrant requirements."

On May 10, 2010 Judge Carr ordered new proceedings for the government to seek the probable cause warrant. However, this remedy only applies to the KindHearts case. Carr said "I leave to Congress 'the responsibility for considering and adopting the appropriate structure' for pre-blocking warrant and probable cause standards that would comply with the Fourth Amendment... Here, however, I am not delineating pre-seizure requirements; I am, rather, constructing a remedy for the constitutional violation in this case." [p. 16 fn 7]

6. Has the Obama administration applied the current rules to shut down charities or freeze any charitable assets? Do you have any reason to believe that the Treasury Department has changed its approach on this issue under the Obama administration?

Answer: After President Obama took office, on Feb. 9, 2009 the Treasury Department shut down the Maryland-based Tamil Foundation as a supporter of the Liberation Tigers of Tamil Eelam (LTTE).¹⁴ That is the only charity designation, either U.S. or foreign, that I could find on the Treasury website that occurred after President Obama took office. It was deemed to be an affiliate of the Tamil Rehabilitation Organization, which was shut down in 2008.

The Department of Treasury has not changed its approach to charities since Obama took office. The same officials that developed and implemented policy under President Bush continue to do so. Despite promises of dialog from Assistant Secretary for Terrorist Financing David S. Cohen made in a July 2009 meeting, Treasury has been unwilling to discuss our proposals relating to frozen funds, due process or clear standards for designation.

Treasury officials have also made it clear they will continue to promote their *Anti-Terrorist Financing Guidelines*, despite the fact that the U.S. nonprofit sector has made it clear the Guidelines do more harm

¹⁴ Treasury announcement at <http://www.ustreas.gov/press/releases/tg22.htm>

than good. In a recent letter to the Treasury Guidelines Working Group Chip Ponce, head of the Office of Terrorism and Financial Intelligence, indicated that Treasury is working on a new version of the Guidelines aimed at high risk areas. His letter lists Muslim majority countries as examples of high risk areas.

While it is helpful that Treasury recognizes problems their enforcement policies create for legitimate charities, the agency has been indifferent to “collateral damage” it causes, telling us the solution to that problem lies with Congress.

Treasury officials also continue to make sweeping statements about the role of charities and the dangers of being exploited by terrorists, failing to acknowledge the difference between highly regulated U.S. charities and less regulated charities in some other parts of the world. Treasury also fails to acknowledge the serious issues at hand by claiming it is all just a misunderstanding that can be cleared up with more outreach. However, *further explanation of flawed policies will not undo the flaws.*

For example, Treasury's proposal for what it calls "alternative delivery mechanisms" as demonstrated in a pilot program it carried out with USAID and a specially created group, American Charities for Palestine, has serious flaws, but Treasury continues to promote it despite objections from the U.S. charitable sector.

This model essentially requires a private charity to funnel contributions from private citizens through USAID. This structure violates the principles of independence of the nonprofit sector, subjects all individuals associated with a charitable project to having their personal information entered into U.S. intelligence databases and ignores due diligence based on on-the-ground investigations and assessments. It is too fundamentally flawed to ever become a widespread solution to the problems charities and government confront when aid is needed in conflict zones.

The "alternative delivery mechanism” incorrectly assumes there are no conditions under which the U.S. charitable sector can provide aid and development in conflict zones without supporting terrorism, either directly or indirectly. This ignores a host of due diligence efforts that go much further than the government’s computer-based data searches.

7. Are these charitable organizations not entitled to due process of law? Perhaps the desire to act quickly and freeze assets is understandable, but shouldn't these organizations have an opportunity to be heard and be able to present evidence in their defense? What are the due process requirements?

Answer: U.S. charitable organizations are constitutionally entitled to due process of law, but current Treasury rules and enforcement policies deny them these rights. The only current "due process" requirement is that a charity can write a letter to Treasury asking it to reconsider its decision.¹⁵ There is limited access to funds to pay for legal defense or to learn about the evidence it must rebut. Appeals to federal court involve only limited review. For example, in 2007 in the case of the Islamic American Relief Agency (IARA-USA) the U.S. Court of Appeals for the District of Columbia upheld the designation, saying that "[w]e may not substitute our judgment for OFAC's."¹⁶

When the government needs to act quickly to prevent assets that may be subject to IEEPA sanctions from being transferred outside the jurisdiction of the U.S. government, it has a wide array of tools it can use. It is not necessary to freeze charitable funds indefinitely. For example, a trustee could be appointed to take

¹⁵ 31 CFR 501.807

¹⁶ *Islamic American Relief Agency (IARA-USA) v. Gonzales*, (D.C. Cir. Feb. 13, 2007). Available at <http://pacer.cadc.uscourts.gov/docs/common/opinions/200702/05-5447a.pdf>.

control of the funds and make sure they are only spend on legitimate activities and are not transferred outside the U.S. The United Kingdom's Charity Commission uses such a system.

An example of overuse of the most drastic remedy can be seen in the case of the IARA-USA. The group's attorney made repeated requests over a two-year period for release of funds for humanitarian and disaster aid, including assistance for victims of Hurricane Katrina. These requests included offers to change their governance structure, financial accounting, and personnel. In a Feb. 7, 2005, letter from its attorney, Shereef Akeel, IARA-USA, said, "This organization would even consider some sort of reasonable monitoring program imposed by the government..." Instead of helping IARA-USA restructure in a manner that would comply with the law and allow people in need to receive the benefit of its services, Treasury denied the request.

8. Is charitable giving that seeks to fight poverty in Muslim-majority countries able to reach the people who need help? Or does federal law create a chilling effect on donations occur where by American Muslims become less likely to donate?

Answer: Charities are having great difficulties delivering aid to people in need in many Muslim majority countries. The problem goes well beyond the reduced donations caused by the chill on U.S. Muslim donors to include operational barriers that disproportionately impact Muslim populations.

These operational problems include the inefficient and obscure licensing processes at Treasury and Commerce Departments, the chilling impact of Treasury's enforcement actions against charities, the lack of an adequate humanitarian exemption to the definition of material support of terrorism, long delays by banks in making financial transactions and more.

For example, at a May 12, 2010 panel discussion sponsored by the Muslim Public Affairs Council and the Charity and Security Network, Ellen Willmott, Deputy General Counsel of Save the Children, described problems her organization has had providing psychological services to children in Gaza. Because Hamas controls the Education Ministry, Save the Children cannot provide services to children in the public schools. In addition, she said the group was unable to dig a well for a village in Somalia because someone from al Shabaab might come along and get a drink of water.

9. Please describe what precisely occurs procedurally and practically after assets of a charitable organization are frozen. Is there an appeal process?

Answer: Most of the process following designation of U.S. charities has involved correspondence between Treasury and the charity's legal representative after Treasury has been asked to reconsider its decision. The next stage in the process is appeal to federal district court.

The best description of the details of this process are found in the Aug. 18, 2009 federal court ruling in *KindHearts for Charitable and Humanitarian Development, Inc. v. Timothy Geithner, et al, Case No. 3:08CV2400*. The judge ruled that Treasury's seizure of KinkHeart's assets without notice or means of appeal is a violation of the Fourth and Fifth Amendments. KindHearts was shut down by the Treasury Department "pending investigation" on Feb. 19, 2006. To date it has not been designated as a supporter of terrorism. The timeline below is based on information in the court ruling. It details the issues and procedural history of the case.

Note: Page numbers for quotes refer to text of the court's opinion. OFAC refers to Treasury's Office of Foreign Assets Control.

From Freezing Assets "Pending Investigation" to "Provisional Determination"

1/22/2002	KindHearts for Charitable Humanitarian Development incorporated in Todedo, Ohio with the goal of providing humanitarian aid without regard to religion or political affiliation.
2002 to 2006	KindHearts seeks guidance from Treasury and implements Treasury's <i>Anti-Terrorist Financing Voluntary Guidelines</i> .
Jan-Feb 2006	Department of Justice serves grand jury subpoenas on KindHearts board members and accountants Ernst and Young, requiring them to produce all records relating to KindHearts from January 2002 to Feb. 17, 2006.
2/19/2006	OFAC freezes about \$1 million in KindHearts assets and executes search warrant seizing all records, computers, equipment, publications from headquarters and residence of President Khaled Smaili
2/19/2006	OFAC sends "blocking notice" to KindHearts stating: 1.) all property blocked "pending investigation into whether KindHearts is subject to designation pursuant to Executive Order 13224 "for being controlled by, a citing for or on behalf of, assisting in or providing financial or material support to, and or otherwise being associated with Hamas." 2.) no prior notice provided because OFAC determined assets could be transferred, making block/freeze ineffectual, and 3.) KindHearts could challenge action by sending a letter stating its position and providing evidence to the Director of OFAC
2/19/2006	OFAC releases a <u>press release</u> [3] with more specific information than blocking notice. Alleges "that KindHearts' officials and fundraisers had 'coordinated with Hamas leaders and made contributions to Hamas-affiliated organizations' including such organizations in the West Bank and Lebanon. The press release asserted that KindHearts was founded to replace the Hamas-affiliated Holy Land Foundation for Relief and Development [HLF] and the al-Qaida-affiliated Global Relief Foundations [GRF]." [p. 7]
4/2006	KindHearts' attorney sends letter to OFAC opposing freezing assets, " but OFAC failed to respond to it. " [p. 7]
11/29/2006	KindHearts' attorney requests copy of OFAC administrative record in the case, but "It received no response." [p. 7]
5/27/2007	OFAC notifies KindHearts that it had made a "provisional determination" that KindHearts is a Specially Designated Global Terrorist, and "for the first time acknowledged receiving KindHearts' challenge to the block pending investigation." [p. 8] There is no provision for a "provisional determination" in IEEPA or Treasury regulations. The notice also included 35 unclassified documents OFAC relied on. It indicated classified and privileged information was also used and provided a three page summary of the

	<p>classified evidence.</p> <p>The OFAC letter "provided no explanation of the specific charges it was considering against KindHearts or why it though the evidence supported a potential designation." [p. 8] However, it said KindHearts could present additional information before a final determination and that OFAC would forward any new, non-classified information for KindHearts' response.</p>
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KindHearts' Ongoing Attempted Defense at OFAC

2/2006 to 2/2008	OFAC denies license to allow KindHearts to use blocked funds to pay its attorneys.
6/14/2007	KindHearts requests access to its own records, now held by OFAC and the Department of Justice. It also seeks access to the full classified record used by OFAC.
6/25/2007	KindHearts sends OFAC a 28 page submission "in which KindHearts attempted to, in its words, 'guess at and address OFAC's concerns.' It attached to that a 1369-page submission of supporting evidence. OFAC never responded to this submission. " [p. 9]
6/27/2007	KindHearts asks OFAC for declassification review of evidence used in blocking notice.
8/10/2007	OFAC agrees to conduct declassification review and says it will give KindHearts 30 days to respond once material is provided. Did not specify when review would be completed.
8/13/2007	KindHearts requests "further clarification of charges against it and an extension of time until forty-five days after the completion of the declassification review. KindHearts stated it needed the extension to receive meaningful process." [p. 10]
8/14/2007	OFAC denies KindHearts request for access to its own documents , saying U.S. Attorney's Office (prosecutors) has most of them.
Ongoing	"OFAC claims it 'misplaced' the June 25, 2007, submission. It does not, however, state what constituted 'misplacing,' how it happened, or may have happened, or when, if ever, and how it located the submission." [p. 9, fn 4]
4/2008	U.S. Attorney's Office "provided KindHearts with an electronic copy of a subset of the seized documents, but did so subject to stringent conditions. Under a protective order, KindHearts members and officers could not view the documents without court approval, and KindHearts counsel could not print or electronically copy and documents." [p. 9, fn 3]
8/16/2007	OFAC tells KindHearts it may contact employees in preparing a defense, but any documents discovered are blocked property that cannot be used without a license from OFAC and counsel must give OFAC identifying information about it. KindHearts' counsel objects in letters in October and December, 2007.
12/26/2007	OFAC approves license "allowing KindHearts counsel to receive copies of blocked documents necessary for them to provide legal services to KindHearts." [p. 11]
6/2008	OFAC changes policy on attorney's fees after consitutional challenge in another case, allowing KindHearts to use a limited amount of frozen funds to pay for legal fees.

KindHearts' Federal Court Challenge

10/9/2008	KindHearts files a complaint in Federal District Court in Ohio seeking a temporary restraining order and preliminary injunction against Treasury final designation and continued enforcement of the blocking order. It subsequently moves for summary judgment on its constitutional claims under the Fourth and Fifth Amendments.
10/9/2008	Judge James Carr issues order barring Treasury and OFAC from designating KindHearts without providing basic due process.
12/2008	OFAC provides KindHearts with declassified version of its blocking and provisional determination memos.
1/2009	OFAC declassifies additional material in blocking memo.
1/30/2009	Judge Carr issues a protective order requiring that "The government shall forthwith commence producing copies at its expense of all seized materials to counsel of record for KindHearts, and as well, as provided herein, to such representatives of KindHearts as counsel shall designate;"
2/27/2009	Ten nonprofits file friend of the court brief supporting due process for KindHearts.
8/18/2009	Judge Carr rules that OFAC and Treasury violated KindHearts rights by seizing its assets without sufficient notice or means of appeal, in violation of the Fourth and Fifth Amendments.
10/26/2009	U.S. District Court Judge James G. Carr issued a temporary restraining order against Treasury barring further action against KindHearts. The court said the action is necessary for it to consider a remedy to the constitutional violations against KindHearts, as found in its August 2009 ruling [11]. It ordered the parties to submit briefs on the remedy issue by Jan. 11, 2010.
5/10/2010	Judge Carr orders a post-seizure probable cause review by the court. To address due process issues he ordered: 1.) an <i>ex parte, in camera</i> meeting with the government to determine what classified evidence will give KindHearts adequate notice, and whether that evidence is capable of further declassification or adequate summarization. In the case where summarization of the classified material is insufficient or impossible, then KindHearts' counsel will be able to review the documents under a security clearance, but will not be able to discuss them with KindHearts. 2.) KindHearts must then be given a meaningful opportunity to respond to the allegations. If classified documents are at issue, the hearing will be closed.

10. Do we have any accurate data on what portion of terrorist financing comes from American charities?

Answer: There is not sufficient public data for me to answer this question. However, using the limited information from Treasury that is available we conducted an analysis that shows that charities do not

make up a significant portion of designated terrorist groups or provide significant funds to terrorists. The results are shown in the tables below:

Table 1: Charities & Individuals Associated with Charities on OFAC's 2006 SDN List

Charities & Individuals Associated With Charities (72, including 43 charities & 29 individuals)	15%
All Charities (43 listed on OFAC list)	8.95%
Individuals Associated With Charities (29 listed on OFAC list)	6.04%
Foreign Charities (37 listed on OFAC list)	7.70%
U.S. Based Charities (6 listed on OFAC list)	1.25%

(Of approximately 480 entities listed on the 2006 OFAC list)

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

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

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

*This includes KindHearts for Charitable Humanitarian Development, which has not be designated as an SDGT but its assets were frozen in February 2006.

Terror Assets report 2009

Table 3: Percent of Frozen Assets

OFAC List Category	Reported Blocked Assets	% of Known Blocked Assets
Foreign Terrorist Organizations (including charitable organizations)**	\$19,886,207	7%
Five State Sponsors of Terrorism	\$280,000,000	93%
Total	\$299,886,207	100%

**There is no publicly available information on how much of this amount includes charitable funds, or as a subset, how much includes funds of U.S. charities.