



Proposals for Removing Barriers to Charitable Giving & Protecting Religious Freedom

“Freedom of religion is central to the ability of peoples to live together. We must always examine the ways in which we protect it. For instance, in the United States, rules on charitable giving have made it harder for Muslims to fulfill their religious obligation. That is why I am committed to working with American Muslims to ensure that they can fulfill zakat.”

President Barack Obama, June 4, 2009

The President’s pledge to remove barriers to charitable giving is a significant step forward and an opportunity to strengthen our nation’s founding values. Charitable giving is an essential component of our democratic civil society and offers people of faith and goodwill an opportunity to fulfill religious obligations and express their shared values. Indeed, helping those in need and bettering our communities is a shared ethos of all Americans, regardless of faith. The American Muslim community is a part of this mosaic, holding mosque-sponsored food drives, aiding flood victims in the Midwest and running community-based health clinics, as well as responding to humanitarian needs overseas.

Since 9/11, giving in the United States has become difficult and confusing. While a number of laws and policies were created to ensure that charitable monies would not be diverted to financing illicit activities, these ambiguous and burdensome policies have affected the *entire* nonprofit sector by creating hurdles for organizations and donors seeking to aid the needy. Investigations and prosecutions of several Muslim charities have particularly frustrated the American Muslim nonprofit sector by creating a chill on well-intentioned charitable giving and activities.

The American Muslim community has taken proactive steps to address these challenges. Muslim Advocates leads the nation’s first Muslim Charities Accreditation Program, a joint initiative with the Better Business Bureau Wise Giving Alliance. This program includes comprehensive educational seminars, online resource materials, and technical assistance to Muslim nonprofit leaders to ensure legal compliance and encourage best practices in nonprofit management. To date, over 140 mosques and Muslim charities have participated in Muslim Advocates charities educational seminars, and several organizations are actively participating in the BBB-WGA accreditation program.

While the American Muslim community does its part, the federal government has an important role to play. The following recommendations to President Obama are intended to strengthen the entire philanthropic sector and offer clarity for Muslim

nonprofit institutions. These are discrete reforms directed to the relevant federal agencies that will allow the President to protect national security, while protecting religious freedom and ensuring that civil society continues to thrive.

U.S. Department of the Treasury

1. The Treasury Secretary should withdraw Treasury's vague and quasi-voluntary *Anti-Terrorist Financing Guidelines: Voluntary Best Practices for U.S.-Based Charities*, which chill the delivery of critical humanitarian aid and provide charities with no protection from legal sanction even if the Guidelines are painstakingly followed.
2. By Executive Order, the President should require the Office of Foreign Assets Control ("OFAC") to promulgate fair procedures for Specially Designated Global Terrorist ("SDGT") designation and review that: (i) provide adequate notice to U.S.-based charitable organizations designated as SDGTs, providing them with a classified summary of the evidence used against them and granting security clearances to their attorneys to review the classified evidence; and (ii) shift the burden to the government to prove that the SDGT designation is valid, as opposed to requiring the charity to prove its innocence. Also, the Treasury Secretary should allow U.S.-based organizations an opportunity for notice, comment and cure prior to submission to the Federal Register and designation on the OFAC list.
3. The Treasury Secretary should implement policies to ensure frozen charitable funds held by the Department are released to donors or used for their charitable purpose according to the original donor's intent.

U.S. Department of State

4. The President should direct the Secretary of State to use her authority under 18 USC § 2339B(j) to waive the material-support prohibition for technical advice and assistance, training and personnel where intended for humanitarian purposes and not used to carry out terrorist activity, in order to ensure that well-intentioned charities can deliver essential aid.

U.S. Department of Homeland Security

5. The Secretary should end overbroad searches and invasive interrogations by CBP of law-abiding Americans returning from international travel by issuing a regulation stating that CBP agents should be prohibited from asking questions about First Amendment-protected religious and political activities, associations and beliefs.

U.S. Department of Justice

6. The Attorney General should enforce Justice Department policies¹ requiring that federal prosecutors not disclose the identities of unindicted co-conspirators, given the chilling effect overbroad designations and public disclosure of charitable entities has had on civic participation.
7. The Attorney General should revise the *2003 Guidance Banning Racial Profiling by Federal Law Enforcement* to ensure that racial, ethnic and religious profiling of individuals and organizations is banned in all law enforcement and domestic intelligence activities. The President should further commit the Executive Branch to these principles through a binding Executive Order.
8. The President should require all federal agencies with law enforcement or domestic intelligence operations (*e.g.*, FBI, Treasury’s Office of Terrorism and Financial Intelligence and Customs & Border Protection) to collect data on persons, houses of worship and charitable organizations in order to ascertain the extent of disparate impacts on discrete ethnic, racial and religious communities as a result of federal law enforcement and intelligence activities. The data should be reported to relevant congressional committees and analyzed by the Inspectors General of the applicable Department, in reports made publicly available to the extent feasible.
9. The President should require all relevant agencies to remedy overboard and opaque watch lists (*e.g.*, lists generated by the Office of Foreign Assets Control) by creating a redress process to allow effective assessments of individual designations, strengthen internal oversight to prevent initially overbroad designations and purge designations lacking a defensible basis.

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Finally, the White House Office of Faith-Based and Neighborhood Partnerships and Office of Social Innovation and Civic Participation should engage directly with American Muslim faith and civic leaders to find ways to help support and strengthen the American Muslim nonprofit sector.

For more information about these recommendations and the Muslim Charities Accreditation Program, please contact Akil Vohra, Counsel, Muslim Advocates, at (415) 692-1486 or akil@muslimadvocates.org.

¹ See § 9-27.760, Department of Justice Criminal Resource Manual (providing that “federal prosecutors should remain sensitive to the privacy and reputation interests of uncharged third-parties”); § 9-11.130, Department of Justice United States Attorneys Manual (instructing US Attorneys not to disclose the identities of unindicted co-conspirators during or in preparation for the trial). See also *United States v. Briggs*, 514 F.2d 794 (5th Cir. 1975) (criticizing the practice of naming individuals as unindicted co-conspirators in an indictment charging a criminal conspiracy).