

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION**

KINDHEARTS FOR CHARITABLE)	
HUMANITARIAN DEVELOPMENT, INC.,)	
)	
Plaintiff,)	
)	
v.)	
)	
TIMOTHY F. GEITHNER, in his official capacity as the)	
Secretary of the Treasury,)	
ADAM J. SZUBIN, in his official capacity as the)	
Director of the Office of Foreign Assets Control, and)	Civil No. 3:08-cv-2400
ERIC H. HOLDER, in his official capacity as the)	Chief Judge James G. Carr
Attorney General of the United States,)	
)	
Defendants.)	
)	

PLAINTIFF’S NOTICE OF SUPPLEMENTAL AUTHORITY

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Introduction

Plaintiff KindHearts for Charitable Humanitarian Development, Inc. (“KindHearts”), through undersigned counsel, respectfully submits the recent decision of the United Kingdom Supreme Court, which addresses several issues raised by KindHearts. *Her Majesty’s Treasury v. Ahmed, et al.*, [2010] UKSC 2, ___ A.C. ___ (Jan. 27, 2010) (online at: http://www.supremecourt.gov.uk/decided-cases/docs/UKSC_2009_0016_Judgment.pdf) (attached and incorporated hereto as Exhibit 1). The United Kingdom Supreme Court, the highest court of appeal of that country, addressed challenges brought by five individuals to the actions of H.M. Treasury in designating them as terrorists and freezing their assets, and recognized the need for judicial review of these acts. *Id.* at ¶ 6.

The Supreme Court stated that because the consequences of the asset freezes “are so drastic and oppressive,” it was necessary for the courts “to see that the coercive action that the Treasury [has] taken is really within [its] powers [since] we must be just as careful to guard against unrestrained encroachments on personal liberty.” *Id.* The Supreme Court concluded that H.M. Treasury had exceeded the scope of its authority. *Id.* at ¶¶ 58, 61.

While the decision of the U.K. Supreme Court is of course not binding here, and does not engage in the kind of constitutional review that the United States courts are authorized to undertake, it is nonetheless worth noting that several Justices expressed concerns about the absence of fair process associated with the freezing of assets of designated “terrorists,” particularly the absence of notice and an opportunity to respond. *Id.* at ¶¶ 181-82 (Rodger & Hale, LJ, concurring); *id.* at ¶¶ 239, 243 (Mance, LJ, concurring). In addition, several Justices expressed concerns about the executive’s adoption of a “reasonable suspicion” standard not supported by the legislation. *Id.* at ¶ 137 (Phillips, LJ, concurring), *id.* at ¶ 197 (Brown, LJ,

concurring in part); *id.* at ¶¶ 227-231 (Mance, LJ, concurring).

Finally, it is also worth noting that the Supreme Court’s judgment cited this Court’s decision and reasoning in its judgment. *Id.* at ¶ 70.

While recognizing that the United Kingdom’s legal regime governing asset freezes of designated “terrorists” is in many respects different from that in the United States, and that the substantive law applied in the United Kingdom is also different, the fact that the United Kingdom’s highest court has expressed concerns sounding in “due process” that echo many of the concerns this Court has expressed may be of interest to this Court.

February 5, 2010

Respectfully submitted,

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*Counsel for KindHearts for Charitable
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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Plaintiff's Notice of Supplemental Authority was filed electronically this 5th day of February 2010. Notice of this filing will be sent by operation of this Court's electronic filing system to all parties.

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