

# U.S. Muslim Charities and the War on Terror

A Decade in Review  
December 2011





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Demonstrators outside a Dallas courtroom in October 2007 during the Holy Land Foundation trial.

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**The Charity & Security Network** is a network of humanitarian aid and advocacy organizations seeking to eliminate unnecessary and counterproductive barriers to legitimate charitable work caused by current counterterrorism measures.

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## Executive Summary

The U.S. counterterrorism regime is based on economic sanctions laws, an overbroad definition of material support of terrorism, the threat of criminal and civil liability, and broad surveillance powers. After 9/11, the Patriot Act expanded these powers and the Bush administration began vigorously applying them to nonprofits. These laws have disproportionately impacted U.S. Muslim charities and those engaged in international aid, development and peacebuilding.

Since 2001, the U.S. government has shut down a total of nine U.S. based charities as supporters of terrorism. Seven of these charities had Muslim affiliations. Another Muslim charity was closed when its leaders were charged with tax fraud. The first part of this report describes each case, and two themes emerge. First, the problematic process used by the Department of Treasury (Treasury) to shut down these groups has been ruled unconstitutional by two federal courts. The second theme is Treasury's persistence in holding the frozen funds. These funds were charitable donations given as part of Muslims' religious obligation to give "zakat."

In some instances, the government has closely scrutinized Muslim charities without any findings of wrongdoing, causing serious harm to a charity's reputation. This opens the door for public backlash against organizations even when they are not engaged in illegal activity. Conservative blogs and publications often jump on these investigations as proof of ties to terrorism. The examples in the second part of this report highlight problems, which include intrusive scrutiny of Muslim charities doing international work, attempts to tie Muslim organizations to terrorism through "guilt-by-association," and the significant growth of surveillance and tracking of lawful, First Amendment activities of Muslim organizations.

Despite the increase in government scrutiny since 9/11, American Muslim charities remain committed to serving those in need. The third part of this report details how American Muslim charities continue to exercise their religious obligation of zakat, through giving to domestic charities and international aid organizations. Muslim charities have also implemented due diligence procedures that go beyond federal requirements and several have started educational efforts to reach out to law enforcement and the public.

For example, Islamic Relief USA assisted tornado victims in Alabama in 2011, and continues to provide famine relief in Somalia. Life for Relief and Development has provided aid to flooded areas of Iowa, as well as aid to Haiti after the earthquake in 2010. Muslim Advocates launched a successful accreditation program that helps Muslim charities make sure they follow accountability standards established by the Better Business Bureau's Wise Giving Alliance.

American Muslim organizations have also organized to defend the civil rights of American Muslims, working to dispel myths about Islam, provide education and research services and address problems created by racial profiling.

The report concludes that ten years after the 9/11 attacks, there has not been sufficient re-examination of the government's policy toward charities, and many of the same problems that existed in 2006 remain in 2011. But the good news is that American Muslim civil society has risen to the challenge, continuing to provide aid to people in crisis, acting to defend the civil rights of people in their community and building bridges to the wider American community.

## Introduction

Over the past decade, American Muslim charities have been at the center of a troubling attack on their ability to carry out their work. In numerous instances, the U.S. government has infringed on their First Amendment right to free speech and to religious freedom to give to charity, known as zakat. Laws passed after the 9/11 attacks and undue scrutiny by the government have significantly impacted the civil liberties of all Americans. But despite this scrutiny, only one American Muslim charity has been convicted of supporting terrorism, and it was not represented at trial.<sup>1</sup>

In March 2006, OMB Watch published the report *Muslim Charities and the War on Terror: Top Ten Concerns and Status Update*.<sup>2</sup> The first section of this paper provides an update on developments since then, including an overview of the Muslim charities shut down or listed as terrorist supporters by the government in the ten years since 9/11. The second section examines excessive government scrutiny and surveillance of Muslim charities and communities. Finally, the report details the ways in which American Muslim civil society has evolved to continue providing humanitarian aid in the U.S. and abroad, while working to prevent terrorism and confront Islamophobia.

## U.S. Counterterrorism Laws Impacting Charities

The U.S. counterterrorism regime is based on economic sanctions laws, an overbroad definition of material support of terrorism, the threat of criminal and civil liability, and broad surveillance powers. After 9/11, the Patriot Act expanded these powers and the Bush administration began vigorously applying them to nonprofits. These laws have disproportionately impacted U.S. Muslim charities and those engaged in international aid, development and peacebuilding.

*When a charity or foundation is designated...all of its U.S. property may be "blocked" (frozen) without notice.*

When a charity or foundation is designated for providing material support to a Foreign Terrorist Organization, all of its U.S. property and financial assets may be "blocked," (frozen) without notice.<sup>3</sup> Financial records, donor information and equipment are seized. When an organization's assets are frozen pending an investigation into possible support of terrorism, there is no deadline on when the investigation must end. There are no clear standards governing designations and they can be based on secret evidence. There is no independent review process for designated organizations and no limit on the time assets may be frozen.<sup>4</sup> Federal courts have found that the process used by the Department of Treasury (Treasury) is unconstitutional, as it lacks the most basic elements of due process: adequate notice of the allegations against one and a meaningful opportunity to respond.<sup>5</sup>

The overly broad definition of material support of terrorism assumes all support furthers a designated organization's terrorist operations, regardless of its actual character.<sup>6</sup> Medical and religious materials are exempted from the definition, but peacebuilding and humanitarian aid such as food, water, tents and blankets are not.<sup>7</sup> The Supreme Court upheld the law against a constitutional challenge on June 21, 2010, deferring to Congress and the administration in matters of national security.<sup>8</sup>

## Part 1. Shutting Down Muslim Charities

Since 2001, the U.S. government has shut down a total of nine U.S. based charities. Seven of these charities had Muslim affiliations. The following summary describes the actions taken against each of the seven Muslim charities shut down by the U.S. government and one that closed when its leaders were charged with tax fraud.

### Al-Haramain Islamic Foundation (AHIF) of Oregon

The Federal Bureau of Investigations (FBI) raided the Oregon branch of the Al-Haramain Islamic Foundation, Inc. (AHIF) on Feb. 18, 2004.<sup>9</sup> The next day the Treasury's Office of Foreign Assets Control (OFAC) blocked its funds, pending an investigation into possible terrorist ties. On Sept. 9, 2004 OFAC named the U.S. branch of the charity a Specially Designated Global Terrorist (SDGT) for allegedly laundering \$150,000 in donations to terrorists in Chechnya.

The charity vigorously challenged its designation, winning a 2011 ruling that the process used is unconstitutional, even though the original designation was not overturned. In addition, the charity has challenged a government wiretap of its attorneys, and the co-founder, Pete Seda, is appealing a conviction of tax fraud relating to the Chechnya donation. These cases are summarized below:

- *Challenge to Treasury's Listing as a Supporter of Terrorism: Al-Haramain v. Treasury*

AHIF challenged Treasury's listing (designation) as a SDGT and freezing funds in the U.S. District Court of Oregon. It alleged that Treasury violated its Fourth and Fifth Amendment rights by conducting an unwarranted seizure of assets and violating due process by failing to give adequate notice of the reasons for the action or an opportunity to respond. While the government did allow Al-Haramain to ask for a reconsideration of their designation in 2004, OFAC did not respond to the request for over three years, during which time, the group's funds remained blocked.<sup>10</sup> In November 2008, U.S. District Court of Oregon Judge Garr King ruled in favor of Al-Haramain, stating that the government failed to provide due process to the group and also potentially violated its Fourth Amendment rights due to the seizure of Al-Haramain's funds.<sup>11</sup>

In September 2011, the U.S. Court of Appeals for the Ninth Circuit upheld the lower court ruling, finding that OFAC was justified in blocking the assets of Al-Haramain, but did so in an improper way.<sup>12</sup> The judges ruled that, under the Fifth Amendment, Treasury was required to give adequate notice of the reasoning behind designating the group. Also, the court found that the OFAC order freezing AHIF's funds amounted to an unreasonable search and seizure since OFAC did not obtain a court order (warrant) first. The case has been sent back to the lower court to determine if any remedy is needed or possible.

- *Challenge to Wiretap of AHIF Lawyers: Al-Haramian v. Bush (Al-Haramain v. Obama)*

Lawyers for Al-Haramain filed another lawsuit in 2006 against the Bush administration (and later the Obama Administration) after the attorneys for the charity discovered they had been the subjects of illegal wiretaps. The attorneys, Wendell Belew and Asim Ghafoor, discovered they were wiretapped after confidential government documents detailing the wiretaps were accidentally mailed to them.<sup>13</sup> The complaint states that the wiretapping occurred during March and April of 2004, after the Al-Haramain had been shut down but before it was officially named an SDGT.

Lawyers for the government claimed that allowing the lawsuit to go forward would negatively impact national security.<sup>14</sup> Chief Judge John Walker of the Federal District Court for the Northern District of California disagreed, finding that the executive branch could not circumvent the Foreign Intelligence Surveillance Act (FISA), which makes it illegal for the government to conduct wiretaps without a special court's approval. According to his opinion, the wiretaps were "outside of the bounds of judicial scrutiny and in conflict with surveillance rules set by Congress." The government was ordered to pay \$2.5 million in legal fees to Belew and Ghafoor.<sup>15</sup> In February 2011, the Department of Justice filed a notice that it would appeal the court's decision.

- *Criminal Charges Against AHIF Director Pete Seda*

Pete Seda, the former head of AHIF, was indicted in February 2005 on charges that he conspired in March 2000 to launder \$150,000 from an Egyptian doctor through AHIF to Chechen rebels fighting Russia. Seda's lawyers argued that the money was a charitable contribution that Seda forgot to disclose on tax forms.<sup>16</sup> Seda was convicted of money laundering and tax evasion on Sept. 10, 2010.



Pete Seda (right) with lawyer Steve Wax

On Jan. 12, 2011 lawyers for Seda filed motions asking for a re-trial based on post-trial revelations that the FBI paid \$14,500 to a key prosecution witness. The FBI failed to disclose this and other information pertaining to witnesses, which was a violation of the Federal Rules of Criminal Procedure. On Feb. 23, 2011 Seda's lawyers filed documents seeking additional evidence about the prosecution's failure to disclose the witness payments. On March 3, 2011 the judge ruled that prosecution did not have to turn over additional evidence and that a retrial would not be granted.<sup>17</sup>

In September 2011 Seda was sentenced to 33 months in prison for tax fraud and money laundering. The government pushed to increase the sentence to five years for material support of terrorism, but the District Court of Oregon Judge Michael Hogan found no evidence connecting Seda to terrorists.<sup>18</sup>

*BIF Applied for a license to use their frozen funds for humanitarian aid...The request was denied.*

### **Benevolence International Foundation (BIF)**

On Dec. 14, 2001 the FBI raided the offices of the Benevolence International Foundation (BIF) in New Jersey and Illinois and froze its funds pending investigation into whether it should be listed as a SDGT. On the same day they also searched the home of its CEO, Enaam Arnaout. In

January 2002, BIF filed suit to contest the asset freeze. However, this civil case was postponed, and later dismissed pending the outcome of a criminal case.

BIF was placed on the SDGT list in November in 2002. BIF applied for a license to use their frozen funds for humanitarian aid, including a children's hospital in Tajikistan. BIF's request offered signed affidavits from hospital staff attesting to the importance of the funding. They also offered to have the FBI accompany the funds to insure they were properly spent. The request was denied.

In February 2003, federal judge Suzanne B. Conlon held that the prosecution "failed to connect the dots" between BIF and terrorism, and the criminal charges against the charity were dismissed.

Arnaout pled guilty to lesser charges of fraud, for leading donors to believe that their funds were going to humanitarian causes. He is currently serving an 11-year prison sentence.

By the time that the criminal case ended, BIF had used all of its resource and did not have funds to pay for lawyers to file a civil action against the freezing of its assets or being listed as a SDGT.

### **Global Relief Foundation (GRF)**

On Dec. 14, 2001 the FBI seized and froze the assets of the Global Relief Foundation (GRF), a charity based in Illinois. The government alleged that GRF and its leaders had provided assistance to Usama bin Laden and Al Qaeda. GRF denied the charges and sought an injunction on the freezing of their assets. When the U.S. District Court denied their request and upheld Treasury's actions, GRF appealed to the Seventh Circuit Court of Appeals.<sup>19</sup>

On Oct. 18, 2002 OFAC designated GRF as a SDGT. The action was upheld in December of the same year. The court held that the lack of notice about the freezing of assets and the use of secret evidence against GRF were constitutional because of the government's interest in stopping terrorism. GRF's assets remain frozen although no criminal charges have been levied against it.<sup>20</sup>

### **Goodwill Charitable Organization Inc.**

FBI agents raided the offices of Michigan-based Goodwill Charitable Organization Inc. after Treasury listed it as a front group for Hizballah on July 24, 2007. No criminal charges were filed against the charity or its leaders for allegedly supporting the Iranian Martyrs Foundation.<sup>21</sup> The charity remains shut down, and has not initiated any lawsuits against their designation.

### **Holy Land Foundation (HLF)**

In December 2001, the FBI raided the Texas office of the Holy Land Foundation (HLF) freezing approximately \$5 million in assets, and seizing documents and other property. OFAC listed HLF as a SDGT, accusing it of funneling money to Hamas. Early in 2002, HLF challenged the listing and seizure, arguing that its due process rights were violated.<sup>22</sup>



Police and bystanders outside the Holy Land Foundation offices. (Mark Graham/New York Times)

The U.S. District Court for the District of Columbia sided with the government despite the fact that the court allowed the government to use secret evidence and hearsay in making its case. The court did note, however, that the actions taken by Treasury in seizing the assets did constitute a "classic Fourth Amendment violation."<sup>23</sup> The court ruled the asset seizure was only a "temporary deprivation" of property and thus did not *immediately* violate the Fourth Amendment. The court suggested that HLF "may...some day have a credible argument that the long-term blocking order has ripened into vesting of property in the United States."<sup>24</sup> In 2003 the Court of Appeals for the District of Columbia upheld the district court's opinion. It added that the freezing of assets without notice "promotes an important and substantial government interest in combating terrorism."<sup>25</sup>



In July 2004, HLF sent a letter to the Department of Justice requesting an investigation into the FBI's handling of the case. HLF argued that the FBI used an erroneous translation of Israeli intelligence material as part of their evidence.<sup>26</sup> The accusation stems from a document written by Israeli officers that allegedly showed a link between HLF and Hamas. The veracity of the document was called into question after HLF had the document independently translated and found 67 discrepancies. At the same time, the government unsealed a criminal indictment of HLF and its seven top officials for providing material support to Hamas and laundering money.

The first trial against HLF ended in a hung jury in October 2007.<sup>27</sup> The case was retried in September 2008, six years after the group was first listed. The government alleged that HLF knowingly sent \$12.5 million in aid to "zakat" committees in the Palestinian territories. Zakat committees are "informal voluntary committees charged with the administration of donations from local communities" located in the Palestinian territories.<sup>28</sup> The defense noted that the zakat committees that HLF funded were never placed on government watchlists, and that they had no way of knowing Hamas controlled them.<sup>29</sup>

On Nov. 24, 2008 five of the leaders of HLF were convicted of material support for Hamas, tax fraud and money laundering.<sup>30</sup> HLF itself was also convicted, although it had no representation at trial and did not put on a defense. The jury also found that the charitable funds originally seized by the OFAC should be forfeited to the government, despite the fact that the money had been designated for humanitarian aid.

On May 27, 2009 sentences were handed down to five of the leaders of HLF. Two men, Shukri Abu Baker and Ghassan Elashi, were each sentenced to 65 years in a federal prison and the others each received between 15 and 20 years.<sup>31</sup> On the Dec. 7, 2011 the Fifth Circuit Court of Appeals upheld the convictions. It court dismissed HLF's appeal for lack of jurisdiction, saying it "was unauthorized and thus invalid, thereby depriving us of jurisdiction." The court ruled against the individual leaders on most issues, but also ruled that although in some cases the trial court erred on the law, there was sufficient other evidence to sustain a conviction.

*IARA-USA made repeated requests for release of the frozen funds for humanitarian and disaster aid, including assistance for victims of Hurricane Katrina*

### **Islamic American Relief Agency (IARA-USA)**

On Oct. 13, 2004 the Treasury Department designated the Islamic American Relief Agency (IARA-USA), along with five senior officials from the organization, as supporters of terrorism.<sup>32</sup> Treasury said IARA-USA was an affiliate of the Islamic African Relief Agency, a Sudanese charity suspected of supporting al Qaeda. IARA-USA's attorney, Shereef Akeel, argued that the U.S. charity was a separate and independent organization from IARA-Sudan, and was "trying to combat

terrorism."<sup>33</sup> IARA-USA had its own board of directors, administrative structure, executive decision making process, and legal and financial accountability obligations.

- *Challenge to Treasury's Listing as a Supporter of Terrorism*

On Dec. 30, 2004, IARA-USA filed suit in the U.S. District for the District of Columbia challenging the constitutionality of Treasury's action. In January 2005, Treasury wrote to Akeel saying the designation of IARA-USA was not a case of mistaken identity with the Sudanese group. On Sept. 15,

2005, the court granted the government's motion to dismiss the case. The court noted that, "The OFAC blocking notice stated that the IARA-USA could challenge the blocking order by writing a letter to the Director of the OFAC." IARA-USA was not allowed to see the affidavits supporting the search warrant authorizing the raid on its office, so it could not know what allegations it needed to rebut.

The Court of Appeals for the District of Columbia upheld the lower court ruling, finding that, even though "the unclassified record evidence is not overwhelming," it would defer to OFAC because the issues affect national security and foreign policy.

IARA-USA made repeated requests for release of the frozen 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 even personnel, in order to assure Treasury that no funds would be diverted to supporting terrorism. OFAC declined to release any funds, stating that they were "not licensed for release except under limited and compelling circumstances consistent with the national security, economic and foreign policy of the United States."<sup>34</sup>

- *Criminal Charges for Violations of Economic Sanctions Imposed on Iraq*

In January 2008 IARA-USA and five of its leaders were charged with engaging in prohibited transactions with Gulbuddin Hekmatyar, an Afghan rebel leader who was designated as a terrorist in 2003.<sup>35</sup> The payments were made to support an orphanage in the Shamshatu Refugee Camp in Pakistan that is located on land owned by Hekmatyar. The Justice Department's press release noted that no terrorism related charges were filed.<sup>36</sup>

The leaders were also charged with money laundering and conspiracy, obstruction of justice relating to payments made to former U.S. Congressman Mark Siljander (R-MI), who was also charged. According to prosecutors, Siljander is accused of taking \$75,000 from a U.S. Agency for International Development grant that IARA-USA was supposed to have used for relief projects in Mali. Prosecutors said the money was to help remove the charity's name from a U.S. Senate Finance Committee list of organizations that allegedly supported terrorism.<sup>37</sup>

In December 2009, charity fundraiser Ahmad Mustafa pled guilty to illegally transferring money to Iraq and former IARA-USA board member, Ali Mohamed Begegni, pled guilty to a role in the conspiracy on April 6, 2009.<sup>38</sup> And on June 30, 2010 Mubarak Hamed, the former president of the charity, pled guilty to conspiring to transfer money to Iraq in violation of federal sanctions. Hamed is the third defendant to plead guilty in the case. Two defendants are still waiting for their trials, including Siljander

### **KindHearts for Charitable Humanitarian Development Inc.**

On Feb. 29, 2006 Treasury froze the assets of KindHearts for Charitable Humanitarian Development Inc. (KindHearts), an Ohio-based charitable organization, for material support of Hamas.<sup>39</sup> Instead of formally designating KindHearts as a SDGT, Treasury notified the organization that it made a "provisional determination" that KindHearts was a SGDT. There is no precedent for this distinction in either the International Emergency Economic Powers Act (IEEPA) or in Treasury regulations.<sup>40</sup>

Treasury accused the organization of transferring funds to the Sanabil Association for Relief and Development. The Sanabil Association was designated as a terrorist organization; however, KindHearts asserts that they sent money to the organization before it had been listed.<sup>41</sup>

Treasury denied KindHearts' requests to use their frozen assets to pay for legal fees. In addition, the government denied Kindhearts' repeated requests to see the classified evidence being used against them.

In October 2008, KindHearts filed a complaint in the U.S. District Court for the Northern District of Ohio seeking a restraining order against OFAC and a preliminary injunction barring it from listing the group as a terrorist organization.<sup>42</sup> Judge James Carr granted this request and ordered OFAC not to designate KindHearts until they had been given due process.<sup>43</sup> In August 2009, the judge ruled that the OFAC's seizure of KindHearts' assets without notice or means for appeal violated their Fourth and Fifth Amendment rights by freezing funds without a court order and failing to provide it with the reasons for the action or a meaningful opportunity to respond.<sup>44</sup>

*...the judge ruled that the OFAC's seizure of KindHearts' assets without notice or means for appeal violated their Fourth and Fifth Amendment Rights...*

In May 2010, Carr ordered several remedies for the violation of KindHearts' rights. First, he called for a post-seizure probable cause review by the court to assess the merits of OFAC's original freezing KindHearts' funds. Next he called for an *ex parte, in camera* meeting with the government to determine what classified evidence used against KindHearts' can be released to the charities' attorneys. KindHearts' must then be given a meaningful opportunity to respond to the evidence presented against them. Finally, Carr ordered OFAC to reconsider allowing KindHearts' to use blocked assets to pay for legal fees.<sup>45</sup>

### **Care International Inc.**

In January 2008 three leaders of a now-defunct Massachusetts charity, Care International Inc. (Care Int.), were convicted in federal court on charges of tax fraud and making false statements.<sup>46</sup> The convictions stemmed from a newsletter published by the organization that prosecutors said was not properly reported to the Internal Revenue Service (IRS). Despite the fact that there were no terrorism charges, prosecutors made frequent references to alleged jihadist material in the charity's newsletter. Judge Dennis Saylor IV frequently warned the prosecution that the case was not about terrorism.<sup>47</sup>

In June 2008, the judge overruled the one of the convictions, conspiracy to defraud the IRS by obtaining tax-exempt status in 1993 for Care Int. However, the charges for omitting information on the charity's tax forms remained in place. An attorney for one of the defendants, noted the difficulty of providing extremely detailed information on the tax forms, saying that, "Invariably you have to omit a huge amount of information or else have a 16,000 page application."<sup>48</sup>

On Sept. 1, 2011, the Court of Appeals for the First Circuit overturned the district court decision, and reinstated the original jury convictions. Lawyers defending the charity leaders argued that the prosecution's frequent references to the content of the newsletter tainted the jury's decision. The case has been sent back to the district court for sentencing.<sup>49</sup>

## **Consequences of Shutting Down Charities**

The consequences of the government's shutting down of Muslim charities have been significant, despite the fact that only one charity has been convicted of material support of terrorism. The ACLU report, *Blocking Faith, Freezing Charity: Chilling Muslim Charitable Giving in the "War on Terrorism Financing"* gives the accounts of over 100 American Muslims, many of whom expressed concerns that they could not safely give zakat. One interviewee expressed a common fear of guilt by association, saying that; "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..."<sup>50</sup>

The report found that this fear caused many to reduce the amount they gave to zakat for fear of prosecution themselves. Some also were concerned that there were very few organizations to give their donations to in the wake of the shutdowns. This has led to a trend away from international to domestic giving. Many have chosen to give their charitable obligation to organizations that only work in the U.S., rather than those overseas, even though that is where many of the neediest recipients reside.

## Part II. Excessive Government Scrutiny and Surveillance of U.S. Muslim Charities and Organizations

In some instances, the government has closely scrutinized Muslim charities without any findings of wrongdoing, causing serious harm to a charities' reputation. This opens the door for public backlash against organizations even when they are never engaged in illegal activity. Many conservative blogs and publications often jump on these investigations as proof of ties to terrorism.<sup>51</sup> This can lead to a further reduction in charitable giving, as mentioned in the pervious section, as well as chilling effect on free speech and freedom of expression. The examples below highlight this problem.

### Islamic Society of North America (ISNA)

In November 2005, the U.S. Senate Finance Committee concluded a high-profile investigation into Muslim organizations and their purported ties to terrorist financing. After spending nearly two years on the investigation, the committee found no evidence of ties to terrorism in the American Muslim charitable sector. A bulk of the information used for the investigation came from the donor lists of the two-dozen charities that make up the Islamic Society of North America (ISNA). ISNA, the largest Muslim organization in North America, was not accused of any wrongdoing. The Executive Director of the ISNA Leadership Development Center, Louay Safi said, "We cooperated with their investigation. We provided records. I am glad to hear this has been concluded"<sup>52</sup>

Sen. Chuck Grassley (R-IA), the chairman of the Finance Committee during the investigation stated that "the fact that the committee has taken no public action based on the review of these documents does not mean that these groups have been 'cleared' by the committee" and that they will "continue to gather information and examine the operations of the charities." A spokesman for the Council on American-Islamic Relations responded saying that the investigation is "indicative of federal law enforcement's dragnet against the American Muslim Community."<sup>53</sup> No further action has been taken by the Senate investigation.



(Kinder USA Photo)

### Kinder USA

In January 2004, a federal grand jury issued a subpoena for the tax returns and other documents of Texas based charity, Kinder USA (Kinder). Kinder, which provides aid to children in the Palestinian territories, suspended fundraising due to fears that their donors or beneficiaries would become entangled in the investigation.<sup>54</sup>

The FBI released no further information, and did not respond to Kinder's repeated requests to discuss the government's concerns with the charity. Absent any response from the government, Kinder resumed fundraising four months after receiving the subpoena. To this day, no action has been taken against Kinder, nor has the government elaborated on why it issued a subpoena.<sup>55</sup>

### Life for Relief and Development (LIFE)

Between 1992 and 2010, Life for Relief and Development (LIFE) provided over \$150 million to aid projects around the world. Originally founded to assist the Iraqi people living under the sanctions of

the 1990s, LIFE has since expanded its humanitarian operations to several countries in the Middle East and West Africa. It also provided aid in the U.S. after Hurricanes Ike in 2008 and Gustav in 2009. LIFE also provided aid to flood victims in Iowa in 2008.

On the eve of Ramadan in September 2006, the FBI conducted a raid on the Detroit area headquarters of LIFE. The agents seized several computers containing the charity's files, databases, e-mail correspondence and financial information. LIFE, at the time the largest American Muslim humanitarian relief and development organization, was told by the FBI that the raid was not related to terrorism and that the charity's operations could continue as before.

Despite the fact that no criminal charges filed, the raid triggered tremendous media scrutiny. This prompted LIFE's local bank to withdraw its services, interrupting its humanitarian assistance programs.<sup>56</sup> On top of this, LIFE was also forced to pay for the copies that the government had to make of their financial and personnel files. The cost of copying the financial records alone was estimated to be \$7,200.<sup>57</sup>

According Mohammed Alomari, LIFE's Chief Operating Officer, "[A]nytime an NGO or any organization is raided...there's always going to be that stigma associated with it."<sup>58</sup> Like other charities raided by the government, the effects of the raid were not limited to the charity itself. Many of LIFE's donors and partner groups were visited and questioned by government officials. Alomari said law enforcement officials targeted their large donors, asking, "Why are you donating to LIFE?"

Before 9/11, LIFE had a good relationship with the Department of Treasury. To conduct relief work in Iraq during the 1990s, a special license from Treasury's Office of Foreign Assets Control (OFAC) was required. "[T]hroughout the '90s we applied to OFAC...and we received licenses. We were one of the very few, if only, American Muslim organizations that was licensed by the Iraqi Red Crescent and by the Treasury Department to deliver medical supplies and humanitarian aid to Iraq at the time," Alomari said.<sup>59</sup>

### **Rep. Peter King and the "Unindicted Co-Conspirators"**

In May 2007 prosecutors in the Holy Land Foundation (HLF) criminal trial published the names of 246 "unindicted co-conspirators," in an apparent violation of Department of Justice procedures. This list of 246 individuals and organizations, including prominent groups such as the Council on American Islamic Relations, were *not* charged with any wrongdoing during or after the HLF trial. Court documents from the HLF case revealed that the list was used as a legal maneuver to allow hearsay evidence in the case, and was not intended for further prosecution of the groups.



Rep. Peter King (R-NY). (AP Photo)

The groups on the list, which included most major U.S. Muslim organizations, complained they had no means of clearing their names. In July 2009, a Federal District Court agreed, ruling that the list should never have been unsealed and released to the public.<sup>60</sup> The court noted that, "The Government has not argued or established any legitimate government interest that warrants publicly indentifying organizations and individuals as unindicted co-conspirators."<sup>61</sup> The list has been resealed. However, countless

copies remain distributed on the Internet. Some conservative blogs have used the list to accuse organizations of being terrorists or terrorist sympathizers.<sup>62</sup>

The issue came up again when Rep. Peter King (R-NY) sent a letter to Attorney General Eric Holder on April 15, 2011, accusing him of declining to prosecute individuals from a list.<sup>63</sup> On April 29, 2011, a lead prosecutor in the HLF case contradicted King's claims that the Department of Justice intended to prosecute the groups on the unindicted co-conspirator list, saying that politics played no role, and that the decision not to indict the groups was "based upon an analysis of the evidence and the law."<sup>64</sup>

## **Government Surveillance of Muslim Communities and Organizations**

Widespread domestic surveillance represents one of the most enduring legacies of the 9/11 attacks. Over the past decade, the U.S. government has conducted extensive surveillance, collecting and analyzing electronic communications, financial records, and other personal information of innocent Americans. The government has also asserted expansive authority to monitor Americans' peaceful political and religious activities. Nowhere is this more apparent than in the American Muslim community, which has seen a sharp increase in the number of covert government agents infiltrating their charities, mosques and other First Amendment protected groups. According to some reports, the FBI maintains a roster of 15,000 spies, many of them tasked with infiltrating Muslim communities in the United States.<sup>65</sup> The harassment and surveillance by the government, which harkens back to the days of COINTELPRO, the domestic spying program the FBI ran from the '50s to the '70s, has had a "chilling effect" on many American Muslims, stripping them of their civil liberties and making them fearful of the government.

- *FBI Infiltration of Mosques*

In February 2011, two civil rights groups filed a lawsuit<sup>66</sup> charging that the FBI had violated the Constitutional rights of hundreds of American Muslims by using a convicted felon to infiltrate California mosques and collect information on members of the congregation. According to the lawsuit, the FBI hired and paid Craig Monteilh to spy on members of the Islamic Center of Irvine and other Southern California mosques between 2006 and 2007. Monteilh, whose criminal activity ranges from burglary to grand theft,<sup>67</sup> was told by FBI agents "that Islam was a threat to America's national security," and was asked to collect e-mail address, phone numbers, and other personal information about mosque members. Using the alias Farouk al-Aziz, he regularly attended services and events to collect the information and record conversations he had with mosque members in their homes and other places.

After news about the spying became public, several mosques reported that members began avoiding public services and there was a notable decrease in religious donations. "The FBI sent in someone with a criminal background to incite individuals in a place of worship. As a result people didn't want to come to the mosque and pray," said Nura Maznavi, a lawyer for Muslim Advocates.

This and similar infiltrations of Muslim-American organizations in St. Louis and Michigan,<sup>68</sup> prompted other lawsuits<sup>69</sup> against the FBI, this time seeking "full disclosure of the standards and procedures" used by FBI agents during surveillance operations on civic or religious organizations. Called the Domestic Intelligence and Operations Guide (DIOG), these guidelines authorize FBI agents to collect and map demographic data using criteria, such as behaviors, lifestyle characteristics and cultural traditions in communities with large ethnic populations.<sup>70</sup> They also allow agents to conduct "assessments," using intrusive techniques to collect information, on any

American without a suspicion of criminal activity. David Sobel, Senior Counsel at the Electronic Frontier Foundation (EFF), one of the groups that filed a suit against the Department of Justice in 2009, said, "Americans have the right to know the basic surveillance policies used by federal investigators and how their privacy is or is not being protected."<sup>71</sup>

*"Americans have a right to know the basic surveillance policies used by federal investigators and how their privacy is or is not being protected"*

*-David Sobel, EFF*

- *NYPD Surveillance of Muslim Community Groups*

Even as the public outcry against the use of government spies on law-abiding groups grows louder, the use of agent provocateurs and covert information collection continued. In Fall 2011, the *Associated Press*<sup>72</sup> reported that informants working for the New York Police Department (NYPD) had "dispatched undercover officers into minority neighborhoods as part of a human mapping program," and that the "police subjected entire neighborhoods to surveillance and scrutiny, often because of the ethnicity of the residents, not because of any accusations of crimes." NYPD officers tracked countless activities of Muslims living in New York City, cataloguing where they ate and shopped, got their hair cut and prayed. They documented a Muslim group at Brooklyn College for possibly engaging in "militant paintball trips," treating the paintball games as informal paramilitary training.<sup>73</sup>

As more details about these spying became public, news reports indicated they had not only monitored the students' internet activity and placed undercover agents in their ranks, but NYPD officers and several school officials may have also violated U.S. privacy laws by accessing and sharing students' records without obtaining warrants.<sup>74</sup>

### **Consequences of Government Scrutiny**

Countless other cases of unwarranted government intrusion into the lives of Americans and their organizations exist. For example, Dr. Rafil Dhafir, a U.S. citizen and leader of the charity, Help The Needy, which provided humanitarian assistance to people suffering from sanction in Iraq, was arrested in February 2003.<sup>75</sup> Despite the indictments included no charges of terrorism, and federal officials said they did not know where the money ended up in Iraq or its intended use, he received a 22 year sentence in a maximum security prison. During the investigation leading up to the trial, nearly 150 people who had contributed to the charity were questioned by federal agents about their religious practices and citizenship status.

The combination of government shutdowns of charities, often with no evidence of ties to terrorism, and perpetual scrutiny of the American Muslims has caused serious harm to civil society and freedom. Fear of guilt by association and investigation has caused some Muslims to forego their religious obligations. Even with this constant scrutiny, there is no evidence that the tactics used by the U.S. government have prevented terrorism.



## Part III. Moving Forward: The American Muslim Charitable Community Post 9/11

Despite the increase in government scrutiny since 9/11, American Muslim charities remain committed to serving those in need. To improve their ability to do so, many charities have implemented due diligence procedures that go beyond federal requirements, and created educational campaigns to reach out to law enforcement and the public.

### Muslim Charitable Organizations: Humanitarians at Home and Abroad

American Muslim humanitarian organizations are dedicated to reducing human suffering at home and abroad. For example, after a series of deadly tornados swept across several southern states in April 2011, Islamic Relief USA (IRUSA), the largest U.S.-based Muslim charity, responded by providing aid to those wounded and displaced by the disaster.<sup>76</sup> Working alongside the Red Cross and Salvation Army, IRUSA conducted damage assessments and provided food and clothing to thousands of people.<sup>77</sup> Another group, the Zakat Foundation of America, also assisted by collecting money that helped pay for the massive clean up the region required.<sup>78</sup>



IRUSA aid worker surveying damage after the April 2011 tornadoes (IRUSA Photo)

In addition to these large operational charities, many smaller groups provide aid in their communities. In Southern Los Angeles, the UMMA Community Clinic offers family and healthcare services to individuals regardless of their ability to pay.<sup>79</sup> In Michigan, ACCESS offers community outreach programs, and operates the Arab American National Museum and the Center for Arab American Philanthropy.<sup>80</sup> The Arab American Action Network in Chicago provides social and cultural services and builds grassroots capacity for the city's Muslim population.<sup>81</sup>

The humanitarian programs and services run by American Muslim charities are not limited to the U.S. IRUSA has staff in several countries, including Kenya, Somalia and Ethiopia, working to meet the needs of people affected by famine and drought. They have distributed food rations to at least 20,000 families, and two gallons of water per-day to at least 120,000 people in Somalia.<sup>82</sup> LIFE, a Michigan-based charity, rebuilt community centers and shipped medicine and hospital beds to Haiti after the devastating 2010 earthquake.<sup>83</sup>

### Proactive Steps to Prevent Terrorism Finance: Muslim Advocates Accreditation Program

Despite the lack of evidence, Treasury has repeatedly claimed that charitable organizations are vulnerable to "abuse" from terrorists. In order to dispel this myth, and to further protect charities from arbitrary government sanctions, the Treasury Guidelines Working Group was founded in 2003. This coalition of over 70 nonprofit organizations sought to work with Treasury to develop comprehensive and understandable voluntary practices to prevent terrorist financing through charitable groups.

The primary focus of the coalition was reforming the *Anti-Terrorist Financing Guidelines: Voluntary Best Practices for U.S.-Based Charities*. Created by Treasury after 9/11, they have received widespread criticism from the nonprofit sector as being “impossible to follow,” bad for donor relations, and burdensome for small organizations to implement.<sup>84</sup> Additionally, strict adherence to the Guidelines provides no legal protection to a charity. During meetings with Treasury officials, the Treasury Guidelines Working Group proposed alternative approaches to protect charitable assets in global hot spots, including the *Principles of International Charity*.<sup>85</sup> Treasury has largely ignored these recommendations.<sup>86</sup>

Without clear standards from Treasury, Muslim Advocates, a national legal advocacy and educational organization, filled the void by partnering with the Better Business Bureau Wise Giving Alliance (BBB-WGA) to create a Muslim charities accreditation program in 2008.<sup>87</sup> In August 2009, three American Muslim charitable organizations, Islamic Networks Group, UMMA Community Clinic, and Inner-City Muslim Action Network, became the first groups to gain the accreditation.<sup>88</sup>

To become accredited, groups must abide by 20 Standards for Charity Accountability, including “truthfulness of their representations, and...willingness to disclose basic information to the public.”<sup>89</sup> The standards “go beyond the requirements of local, state and federal laws and regulations.” H. Art Taylor, president and CEO of the BBB-WGA, praised the program, saying, “Because the Muslim charities have been particularly in the public focus, I think they have a greater interest in demonstrating to the public that they are just like every other charity, they meet standards like everybody else.”<sup>90</sup>

The Muslim Advocates program, along with other accreditation initiatives<sup>91</sup> exemplify the charitable sector’s commitment to ensuring due diligence. However, Treasury remains unmoved in the face of these proactive steps. Frustration with the Treasury’s lack of reforms led to the disbanding of the Treasury Guidelines Working Group in November 2010.<sup>92</sup> In a letter to Treasury, the working group cited “unwillingness to make any substantive changes to its approach—or to recognize the important role of global philanthropy in increasing national security through funding to address poverty, inequality, disease, and other pressing needs” as grounds for ending the dialogue.<sup>93</sup>

### **Muslim Advocacy Groups: Building Community Relations and Fighting Stereotypes**

There has been a spike in attacks on the civil liberties and rights of American Muslims since 9/11. A report by the Council on American-Islamic Relations (CAIR) found that in 2008, its affiliate chapters across the country reported over 2,700 civil rights complaints.<sup>94</sup> The complaints varied, ranging from bullying at schools to racial profiling by law enforcement. To combat this, groups such as CAIR, the Muslim Public Affairs Council (MPAC), the Arab-American Anti-Discrimination Committee (ADC), ISNA and many others are working to build stronger relationships with law enforcement and educate the public on these issues.

In December 2009, MPAC released a report highlighting how civil rights and national security interests can be respected between the American Muslim community and law enforcement. The report followed revelations that the FBI used under-cover agents to infiltrate mosques in California.<sup>95</sup> These invasions had had a “chilling effect” on the Muslim community who felt the FBI was targeting them unfairly.<sup>96</sup> Under the model advocated in the report, law enforcement would focus “on criminal behavior while Muslim communities deal with ideological and social components to radicalization.”<sup>97</sup>

Other groups, such as the Texas-based Freedom and Justice Foundation, also work to provide an interface between law enforcement and the American community. The group's president, Mohamed Elibiary, serves on the Department of Homeland Security's Federal Advisory Council.<sup>98</sup>

### **Fighting Islamophobia through Dialogue and Education**

The increase of Islamophobia since 9/11 is well documented.<sup>99</sup> In response to the misinformation and persistent stereotypes, several groups have launched education and media campaigns, targeting the public and law enforcement.

- *Dispelling Myths During the "Radical Islam" Hearings*

In February 2011, a series of well-attended forums were held on Capitol Hill showcasing the support of the American Muslim community in their effort to prevent violent extremism. Sponsored by the ADC and MPAC, the forums were in response to the hearings planned by Rep. Peter King (R-NY) on homegrown Islamic terrorism.<sup>100</sup> The Legal Director for ADC, Abed Ayoub, said that the forums were a way to remind King that, "the community has been cooperating with law enforcement for a number of years."

*...the Muslim community has been extremely active in combating terrorism, particularly through partnerships with law enforcement.*

In response to King's first hearing on March 10, 2011, American Muslim organizations such as MPAC and CAIR joined a coalition of 40 advocacy groups, including the American Civil Liberties Union (ACLU), the Rutherford Institute, and the Bill of Rights Defense Committee, in publishing a letter to King.<sup>101</sup> It said, in part, the hearings "risk chilling fundamental First Amendment freedoms of religion, speech, and association." Another letter organized by Muslim Advocates and signed by

over 50 groups, including Amnesty International and Indian Muslim Relief & Charities, was sent to House of Representatives Speaker John Boehner and House Minority Leader Nancy Pelosi to "object to the hearings in their current form" and called for King to examine "violence motivated by extremist beliefs, *in all its forms*, in a full fair and objective way."<sup>102</sup>

In an interview with CNN, Alejandro Beutel of MPAC refuted King's claims that Muslims have not worked to curb terrorism, saying that the American Muslim community has been "extremely active in combating terrorism, particularly through partnerships with law enforcement." He added that several terrorist plots have been foiled thanks to the work of Muslim communities.<sup>103</sup>

- *The FBI's Islamophobic Training Seminars*

In September 2011 *Wired.com* revealed that the FBI was using Islamophobic and erroneous training material for its agents. The content of the training programs included presentation slides erroneously claiming that devout Muslims were more likely to be violent than less devout believers.<sup>104</sup> Other presentations stated that Muslims may be using "immigration" and "lawsuits" as ways to attack the U.S., a claim that directly conflicts with the Constitution and principles of democracy.<sup>105</sup>

Outrage about the training materials prompted Muslim Advocates to organize a coalition of almost 60 Muslim, Arab, and South Asian organizations requesting that the White House create an interagency taskforce to investigate bigoted and offensive counterterrorism trainers and materials.

In a letter sent to John Brennan, the Assistant to the President for Homeland Security and Counterterrorism and Deputy National Security Advisor, the groups said, "The gravity of this issue and the need for an independent, effective investigation into the federal government's training of its agents and other law enforcement is imperative."<sup>106</sup>

ISNA called for an immediate investigation into the FBI training programs. Its president, Imam Mohamed Magid, expressed his concern that, "[T]his training is disturbingly inaccurate and violates the constitutional rights of the American Muslim community by placing them under deep suspicion simply due to their religious beliefs."<sup>107</sup>

ISNA has held many conferences and events on the subject of ending Islamophobia. In July 2011, ISNA's annual conference had 40,000 attendants and featured panels and workshops aimed at combating stereotypes, such as "Muslims Under a Microscope" and "Anti-Sharia Initiatives: How to Respond."<sup>108</sup> The conference also focused on interfaith outreach and community building.



Participants in ISNA's 2010 convention in Rosemont, IL. (Soraya Salam/CNN)

- *Education and Research Initiatives*

Many other Muslim advocacy organizations also make public education a top priority. The Institute for Social Policy and Understanding (ISPU) is a think-tank founded after 9/11 by scholars that want to respond to increased public interest in Islam and the major gap in available information. It assembles scholars, journalists and other experts with the goals: "1) to conduct objective, empirical research on American Muslims and 2) to provide a fresh perspective and relevant policy analysis on the most critical issues facing the United States."<sup>109</sup> ISPU research has covered many of the damaging effects of post-9/11 laws and government actions.

Karamah, an organization that supports the rights of Muslim women worldwide, was founded in 1993 by law professor and Islamic scholar Azizah al-Hibri. It conducts education programs and promotes scholarship and a network of Muslim jurists and leaders. "Since 2003, KARAMAH has developed a set of intensive and highly-esteemed educational workshops in the U.S. and abroad. These programs offer a core set of courses about the gender-equitable principles of Islamic law, and help participants develop leadership and conflict resolution skills. The training aims to equip women with the tools necessary to make a beneficial difference from within their own religious contexts."<sup>110</sup>

- *Ending Racial Profiling*

Several advocacy groups have also fought for legislation to ban the use of racial profiling in law enforcement. Groups such as CAIR, Muslim Advocates, MPAC, the ACLU and back the End Racial Profiling Act of 2011.<sup>111</sup> Introduced in the House by Rep. John Conyers (D-MI) in December 2011, and co-sponsored by 37 other members, the bill would prohibit federal or state law enforcement agencies from using race, ethnicity, national origin or religion as a basis for investigation.<sup>112</sup> A companion bill was introduced in the Senate by Ben Cardin (D-MD) in October 2011. Both bills will also create training programs and procedures for investigating complaints of profiling.

A letter organized by the Leadership Conference on Civil and Human Rights argues that, “racial profiling results in the misallocation of law enforcement resources and therefore a failure to identify actual crimes that are planned and committed” as well as a “loss of trust and confidence in local, state, and federal law enforcement.” The letter has been signed by groups such as the Asian Law Caucus, The Center for National Security Studies, NAACP, and the Muslim Legal Fund of America.<sup>113</sup>

CAIR’s website notes the importance of the legislation for cooperation, saying that, “even the perception that...profiling is being used drives a wedge between law enforcement agencies and the communities they serve.”<sup>114</sup> The bill has been assigned to the Judiciary Committees in both the House of Representatives and the Senate.

## Conclusion

In 2006 the report *Muslim Charities and the War on Terror* concluded that:

“Despite powerful new investigative tools, little has been accomplished, and at far too great a cost.....Looking forward, there is an urgent need for the government to reexamine policies that target the nonprofit sector with little prospect of stopping terrorism and at the expense of important humanitarian and human rights work and the constitutional rights of U.S. donors and U.S.-based charities.”

In 2011, ten years after the 9/11 attacks, there has not been sufficient re-examination of the government's policy toward charities, and many of the same problems that existed in 2006 remain today. These include opaque and unfair procedures to shut down charities, indefinite freezing of funds intended to relieve human suffering, and a general view that charities are a threat to national security rather than a source of confronting terrorism through their humanitarian work. The growth of surveillance of protected First Amendment activity and profiling fueled by Islamophobia threatens fundamental rights of free association and speech and has chilled charitable donations for fear harsh penalties.

But the good news is that American Muslim civil society has risen to the challenge, continuing to provide aid to people in crisis, acting to defend the civil rights of people in their communities and building bridges to the wider American society. There is also good news from the federal courts, which have held that the process used by Treasury to shut down U.S. charities is unconstitutional.

Five years from now we hope to report that the hysteria of Islamophobia has given way to sensible, long term rules to govern charitable work, based on fundamental principles of fairness and respecting the humanitarian imperative.

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