

July 16, 2012

Timothy Geithner, Secretary of the Treasury
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

Dear Secretary Geithner,

We are writing to commend the Department of Treasury for entering into a settlement in the case *KindHearts for Charitable Humanitarian Development, Inc. v. Geithner* on May 1 of this year. We also commend you for the decision not to seek Supreme Court review of *Al-Haramain v. Department of Treasury*. In both cases federal courts ruled that the current process used by Treasury to list U.S. charities as supporters of terrorism is constitutionally flawed.

To avoid constitutional deficiencies in any future listing of a U.S. charity as a supporter of terrorism, we urge you to conduct a review of the relevant current Treasury regulations and to propose new regulations that reflect the key elements of the court decisions in *Al-Haramain* and *KindHearts* and of the settlement. The review process should include input from the U.S. nonprofit sector, leading to public notice and comment on a new proposed rule. We stand ready to provide both input and expertise into this effort.

Specifically, the regulations should be revised to reflect the court rulings that:

- Organizations must be provided with adequate notice of the reasoning for freezing their assets and a meaningful opportunity to contest the Treasury department's decision.
- Blocking assets constitutes a "seizure" under the Fourth Amendment, and the government must therefore obtain judicial authorization based upon probable cause before freezing the assets of a particular organization.
- When the government relies upon classified information to support a determination, it must take measures to mitigate the unfairness to targeted organizations. Additionally, the need to protect classified information does not preclude judicial review.
- The government's denial of an organization's request to use blocked assets to pay attorney's fees can be arbitrary and capricious.

As leaders in the U.S. nonprofit sector, we have expressed grave concern about the process used by Treasury to shut down nine U.S. organizations as supporters of terrorism, freezing all their donated assets. The key elements of the *KindHearts* settlement are consistent with suggestions many of us have put forward to improve the process:

- A court supervised process ensuring that, after payment of just debts, frozen charitable assets are transferred to other charities, to be spent on programs similar to those operated by KindHearts prior to being shut down;

- Removing KindHearts from the terrorist list after it fulfills the terms of a negotiated agreement. (In this case, KindHearts has agreed to dissolve. We can envision a future case in which the parties might negotiate other terms that would allow a charity to operate in the future, such as termination of a grant agreement with a local partner overseas or resignation of a board member.)

Once the terms of the settlement have been carried out, the case will be dismissed with prejudice. This leaves Judge James Carr's opinion, finding the process used by Treasury to shut down KindHearts constitutionally deficient, standing as the final word on the law in this case. While neither party in *KindHearts* admitted fault in the settlement, we urge you to accept the substance of Judge Carr's ruling and establish procedures that are fundamentally fair as well as consistent with the Constitution and with human rights principles. This would also be a constructive response to the ruling in *Al-Haramain*.

Even though listing of U.S. charities is rare, such a change would have enormous benefits for both the U.S. government and the charitable sector. It would give the Treasury process credibility it currently lacks, due to the many constitutional deficiencies identified by the court in both cases. It would assure charities that the legal black hole KindHearts fell into has been eliminated and replaced by a process they can have confidence in. It ensures that the ultimate beneficiaries of charitable funds, the people in need around the world, do not do without badly needed services because funds are frozen.

U.S. charities and the non-profit sector that works to support them condemn terrorism, and work hard to ensure that their operations do not benefit terrorists, either directly or indirectly. In fact, many charities confront the conditions that breed violent extremism through their work, and as such, are on the front lines in the fight against terrorism. In this spirit, we hope to work with your Department in the coming months to cure the constitutional deficiencies in Treasury's regulations that were outlined in the two court rulings.

Yours truly,



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