



**Due Process?**

**The State of U.S. Treasury's Terrorist Listing Procedures**

July 29, 2019

# Brief Historical Background

The PATRIOT Act of 2001:

a series of amendments to existing laws that dramatically expanded powers and prohibitions

- Prohibition on material support of terrorism
- Sanctions laws and Executive Order 13224
- Bank Secrecy Act



# Post 9/11 Executive Orders

## Cancel Sanctions Humanitarian Exemption

International Emergency Economic Powers Act exempts from sanctions:

- donations of articles such as food, clothing, medicine intended to be used to relieve human suffering...
  - UNLESS the President determines such donations would “impair his ability to deal with the emergency,” are coerced or would endanger US armed forces.
- Beginning with EO 13224 this humanitarian exemption is routinely cancelled in terrorism-related EOs.



# New Powers Used to Shut Down 9 US Charities (Dec 2001-Jan 2009)

## **Shut Down "Pending Investigation"**

- [Al-Haramain Islamic Foundation](#) 1/19/04 (Later designated on 9/9/04)
- [Benevolence International Foundation](#) 12/14/01 (Later designated on 11/02)
- [Global Relief Foundation](#) 12/14/01 (Later designated on 10/18/02)
- [KindHearts for Charitable and Humanitarian Development, Inc](#) 2/19/06

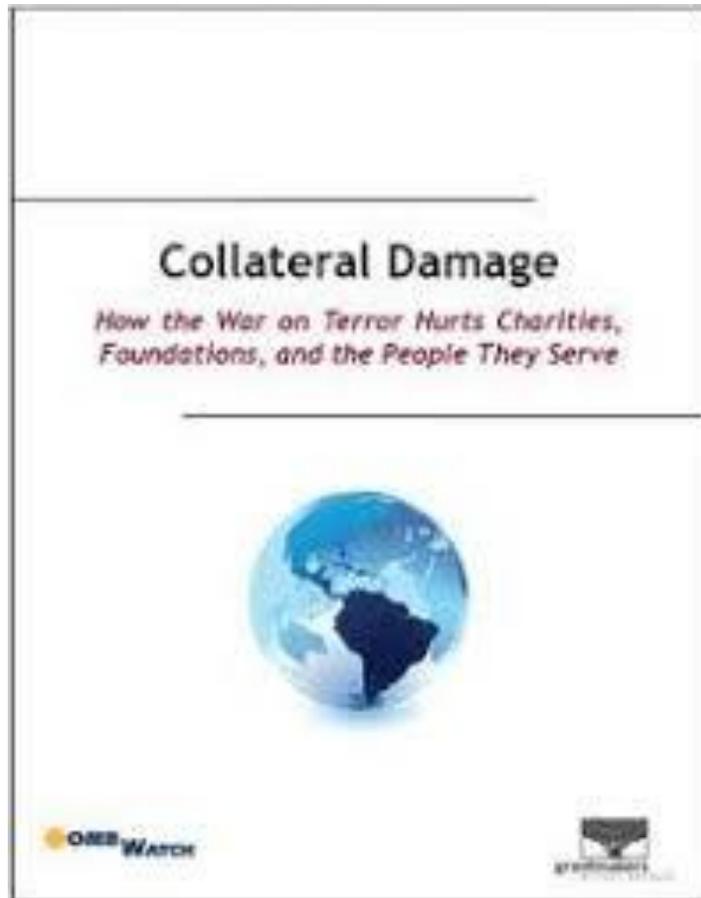
## **Designated Only:**

- [Goodwill Charitable Organization](#) 7/24/07
- [Holy Land Foundation](#) 12/01/01, re-designated 5/02
- [Islamic African Relief Agency](#) 10/13/04
- [Tamil Rehabilitation Organization](#) 11/15/07
- [Tamil Foundation](#) 2/11/09

# Consequences of Designations of US Charities

See details in 2008 report

[https://www.charityandsecurity.org/studies/Collateral\\_Damage](https://www.charityandsecurity.org/studies/Collateral_Damage)



- Funds subject to US jurisdiction frozen
- Records, property and equipment can be seized
- U.S. persons and entities barred from engaging in transactions
- Limited access to funds to pay for legal representation
- Automatic revocation of tax-exempt status (501(c)(p))
- Reputational damage

# Limited Appeal Rights

- When the designation is published in the *Federal Register*, it may, but is not required to, include a list of reasons.
- A listed person or entity can then request reconsideration under 31 C.F.R. § 501.807, but Treasury has discretion to grant or decline an in-person meeting.
- As an additional wrinkle, the process is exempt from the Administrative Procedure Act's "right to a hearing before a quasi-independent administrative law judge," because Treasury operates the sanctions regime under the authority of the president.
- Designation can be challenged in a federal court at any point, but the standard of review is limited to "whether Treasury's action was arbitrary or capricious, based on the administrative record." If a designated charity loses its appeal it remains on the list, freezing the assets indefinitely.
- There is no formal process in the case of U.S. charities to ensure these assets are released to another charity for charitable purposes.

