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## Deep Freeze: Islamic Charities and the Financial War on Terror.

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## DEEP FREEZE: ISLAMIC CHARITIES AND THE FINANCIAL WAR ON TERROR

ERICH FERRARI\*

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*“We survive on the alms given by our neighbors. . . . May Allah support us [so that we may] overcome our ordeal.”<sup>1</sup>*

-Om Ashraf, Palestinian mother of 10  
and wife to a disabled husband

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\* The author wishes to thank Allah, my mother Elaheh Hajassdolah Ferrari the most amazing woman in the world, my grandfather Seyed Reza Hajassdolah, the pain he endured provided me with the life I live today, my father Barry Ferrari for keeping me on track, Ali Reza Hajassdolah, Amenieh Hajassdolah, and Roya Hajassdolah for raising me to be the man I am, all the editors of *The Scholar* for believing in me, especially Nohl P. Bryant and Sara Martinez who made this comment what it is today, Professor Jeffrey F. Addicott for his invaluable insight and for providing me with the tools and education to delve into this type of subject matter, The Center for Terrorism Law and Grace Uzomba for allowing me to be a part of such an great and important organization, Pohectic Life Records, Nine Seven Entertainment, the whole Miami-Dade County, GZA and Ghostface Killah from the Wu-tang Clan, and all the students at Tehran University.

1. See generally Yasser el-Banna, *Palestinian Orphans Left Out in Ramadan* (2003), at <http://www.islamonline.net/English/News/2003-11/05/article03.shtml> (last visited Mar. 25,

In 2002, over 15,000 Palestinian orphans were deprived of charitable support from American-based private organizations dedicated to alleviating the suffering of Muslim peoples.<sup>2</sup> According to Mr. Sakr Abu Hein, the director-general of a pro-Palestinian charity whose assets were frozen following September 11, 2001, “We can’t spend a penny to support our people as long as our assets are frozen.”<sup>3</sup> Mr. Abu Hein’s organization alone provided relief for over 3,000 orphans, 1,000 poor families, 5,000 kindergarten children, and 1,000 students living in the impoverished Gaza Strip.<sup>4</sup>

Cases such as the one presented by Mr. Abu Hein demonstrate the negative consequences for global philanthropy resulting from the United States’ “financial war on terror”—a policy that seeks to not only cut the purse strings of terrorist organizations, but also to attack the resources of entities providing material support to terrorist groups.<sup>5</sup> Charities supplying aid to Muslims in the Middle East and Central Asia have particularly been affected by this policy.<sup>6</sup> The United States’ broad regulation of financial activity following the terrorist attacks of September 11, 2001 finds its justification in the interests of national security and is currently being wielded as a tool to stop those who provide funding to terrorism. Regardless of its efficacy in fighting terror, it is imperative that close scrutiny be given to the mechanics by which the policy is carried out, lest civil liberties<sup>7</sup> are unnecessarily abused and the freedoms for which we fight become meaningless phantoms.

## I. INTRODUCTION

*“Fighting terrorism is like being a goalkeeper. You can make a hundred brilliant saves but the only shot that people remember is the one that gets past you.”*

-Paul Wilkinson, British scholar

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2005); Sahar Aziz, Note, *The Laws on Providing Material Support to Terrorist Organizations: The Erosion of Constitutional Rights or a Legitimate Tool for Preventing Terrorism?*, 9 TEX. F. ON C.L. & C.R. 45 (2003).

2. Yasser el-Banna, *supra* note 1.

3. *Id.*

4. *Id.*

5. Matthew Levitt, *Iraq, U.S., and the War on Terror: Stemming the Flow of Terrorist Financing: Practical and Conceptual Challenges*, 27 FLETCHER F. WORLD AFF. 59, 61 (2003).

6. Dan Eggen & John Mintz, *Muslim Groups’ IRS Files Sought: Hill Panel Probing Alleged Terror Ties*, WASH. POST, Jan. 14, 2004, at A1.

7. “Civil Liberties” refer to immunities from governmental interference or limitations on governmental action, which have the effect of reserving rights to individuals. See BLACK’S LAW DICTIONARY 239 (7th ed. 1999).

In the past 100 years, the phrase, “you have to fight fire with fire” has become axiomatic. This is most evident by the defeat of certain “ism’s” that had come to define the twentieth century political landscape, notably: Imperialism/Colonialism, Nationalism, Socialism, and to a large extent Communism.<sup>8</sup> Diligent in its ever-progressing pursuit of justice and freedom, the United States alongside much of the Western world pitted its own political system and social ideologies against all others in a showdown that would ultimately end with the collapse of the Soviet Union and the United States donning the crown of lone world super power.<sup>9</sup> Then, as the sun set on New York City on September 11, 2001,<sup>10</sup> a newer and perhaps deadlier “ism” revealed its face, and as the plumes of smoke emerged from the fallen towers of the World Trade Center, the United States learned just how deadly this “ism”—terrorism—could be.<sup>11</sup>

Terrorism is far different from those enemies the “free world” triumphed over in the World Wars of the twentieth century or during the Cold War.<sup>12</sup> In many cases, those conflicts consisted of grand engagements between militarized forces of nation-states for the purposes of acquiring territory or securing influence over certain geographic areas or both. Those types of conflicts differ vastly from the current war on terror. Today, the enemies facing the United States operate by using fear and terror to effectuate political and social agendas.<sup>13</sup> These enemies are mobile, intelligent, determined, and nearly invisible to detection.<sup>14</sup> Beset by such foes, the United States cannot fight a war in the traditional sense. While the drone of the American war machines can be heard by the entire world, the question remains: in what direction and towards whom should we point them?<sup>15</sup>

In a war where the soldiers of terror disregard all rules of warfare and walk freely among the general civilian population, and where weapons of mass destruction are widely available, America must use the rule of law to its advantage. To eschew the use of legal tools in the war on terror is a

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8. STEPHEN E. AMBROSE & DOUGLAS G. BRINKLEY, *THE RISE TO GLOBALISM: AMERICAN FOREIGN POLICY SINCE 1938* 352-380 (8th ed., rev. 1997).

9. *See id.* at 352-380.

10. JEFFREY F. ADDICOTT, *WINNING THE WAR ON TERROR: LEGAL AND POLICY LESSONS FROM THE PAST 18-20* (2003).

11. Aaron J. Noteboom, Book Note, *Terrorism: I Know It When I See It*, 81 *OR. L. REV.* 553 (2002).

12. Karl M. Meesen, *Current Pressures on International Humanitarian Law: Unilateral Recourse to Military Force Against Terrorist Attacks*, 28 *YALE J. INT’L L.* 341 (2003).

13. H. Cooper, *Evaluating the Terrorist Threat, Principles of Applied Risk Assessment*, in *CLANDESTINE TACTICS AND TECHNOLOGY SERIES 4* (Gaithersburg, M.D., ed., 1974).

14. Greg Travialo & John Altenburg, *Terrorism, State Responsibility, and the Use of Military Force*, 4 *CHI. J. INT’L L.* 97, 97-98 (2003).

15. *Id.* at 98.

recipe for disaster.<sup>16</sup> This new enemy must be fought not only on battlefields, but also in the courtrooms and legislative organs of nations and institutions that seek to prevent the catastrophic events terrorists may cause.<sup>17</sup> Preemptive military action is but a redoubt against the larger rampart of legislation and law enforcement that America must rely upon for protection.

Nevertheless, in the quest to protect the homeland, lawmakers walk a fine line between freeing their constituents from the grip of terror and invoking their own form of legal terrorism. In other words, by stripping people of their rights and freedoms in the name of the War on Terror,<sup>18</sup> the United States undermines its own values and identity.<sup>19</sup> Pragmatically speaking, the linchpin on any discussion is to find the proper balance between anti-terror legislation and civil liberties.

While the study of anti-terror legislation and its impact on civil liberties could in and of itself constitute a multi-volume compendium, an important aspect that is often overlooked centers on the freezing of assets of American-based Islamic-philanthropic organizations who allegedly aid and abet terrorists.<sup>20</sup> This is particularly felt vis-à-vis the constitutional rights of Muslims living in this country, as well as the effects such legislation can have on those people who benefit from the functioning of many American-based Islamic charities which may be targeted in the war on terror.<sup>21</sup>

This comment departs from others addressing similar topics by looking directly at the role that the International Economic Emergency Powers Act (IEEPA) plays in freezing assets of charitable organizations that allegedly aid and abet terrorism, and by offering new solutions to the problems arising from such actions. Part II provides an overview of the IEEPA and its subsequent amendments under Executive Order 13,224 and the United and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act). Part III addresses the legal impact these laws have on the rights of American citizens. Much attention is given to how these regulations affect First and Fifth Amendment rights. Part IV discusses the hu-

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16. Jeffrey F. Addicott, *U.S. Must Follow the Law of War or Battle Enemy's Children*, BIRMINGHAM NEWS, Oct. 28, 2001, at C5.

17. JEFFREY F. ADDICOTT, *supra* note 10, at 52-53.

18. The term "War on Terror" is used to describe the actions taken by the United States government against international terrorism since September 11, 2001.

19. See Neal Devins, *Congress, Civil Liberties, and the War on Terrorism*, 11 WM. & MARY BILL RTS. J. 1139, 1139 (2002).

20. Levitt, *supra* note 5, at 61.

21. David Cole, *The New McCarthyism: Repeating History in the War on Terrorism*, HARV. C.R.-C.L. L. REV. 1, 12-13 (2003).

manitarian consequences of these laws. Specifically, it examines American public sentiment towards Muslims and United States citizens of Middle Eastern descent, how the legislation affects Muslim Americans' rights, and how the recipients of such donations will suffer due to these financial regulations. Part V contrasts the actual benefit accrued from the laws with the damage they do to disenfranchised groups in other parts of the world. Essentially, Part V collapses into the following question: exactly how effective is this legislation in fighting terrorism, and do the benefits outweigh the costs? Part VI lays out proposals for change, the adoption of which could facilitate freedom at home and abroad, while simultaneously securing our nation against further attacks.

## II. THE LEGISLATION

*"The spirit of liberty is the spirit which is not too sure that it is right. . . ."*

-Judge Learned Hand

Numerous questions arise when one confronts the phenomenon of terrorism: "What is it?" and "How do we characterize certain behaviors as being terrorist-like in nature?" Due to the difficulty in establishing the elements of terrorism, labeling an organization as a terrorist group can be somewhat subjective. In turn, determining which organizations actually aid and abet an alleged foreign terrorist organization and which do not is often problematic. Principally, the above scenario is a two-pronged analysis: it must be determined (1) whether the donor-entity is providing material support,<sup>22</sup> and (2) whether the donee-organization is engaged in terrorist activity.<sup>23</sup> This confusing analysis coupled with legislative initiatives designed to fight terrorism can result in the implementation of poorly designed laws that input severe consequences on their victims.<sup>24</sup> In other words, the legal framework created to fight the War on Terror must be carefully thought out, thoroughly reviewed, and closely scrutinized to ensure that it does as little harm to the innocent as possible.

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22. According to 18 U.S.C. § 2339A(b)(1) (1994), the phrase "material support or resources" means:

any property, tangible or intangible, or service, including currency or monetary instruments or financial securities, financial services, lodging, training, expert advice or assistance, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, and transportation, except medicine or religious materials.

23. Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, tit. IV, 110 Stat. 1258.

24. Evelyn Brody, *The Twilight of Organizational Form for Charity: Musings on Norman Silber, A Corporate Form of Freedom: The Emergency of the Modern Nonprofit Sector*, 30 HOFSTRA L. REV. 1261, 1262-63 (2002).

Regardless of the difficulties associated with labeling certain charities as providing material support, neutralizing those that aid terrorists with material support is a strategic linchpin of the War on Terror.<sup>25</sup> Through legislation, the government has been able to systematically freeze the assets of certain Islamic charities.<sup>26</sup> The International Emergency Economic Powers Act (IEEPA) is one of the primary tools used in fighting the financial war on terror.<sup>27</sup> Although the IEEPA existed prior to the terrorist attacks of September 11, when coupled with other legislation—the new initiatives and amendments contained in both the USA PATRIOT Act<sup>28</sup> and Executive Order 13,224<sup>29</sup>—it provides the legal framework to block assets of organizations that are deemed to be aiding and abetting foreign terrorist groups.

This legislative regime has resulted in a number of Islamic charities having their assets frozen without first being charged or much less convicted.<sup>30</sup> It is important, therefore, to understand how these laws interact with the Due Process Clause<sup>31</sup> and the First Amendment.<sup>32</sup> Acquiring this understanding will also make evident that such acts do more to undermine the United States cause in the eyes of America than to help capture and prosecute terrorists and their aids.

#### A. *The International Emergency Economic Powers Act (IEEPA)*

Throughout the history of the United States, the government has heavily relied on economic sanctions as a tool of foreign policy.<sup>33</sup> In keeping with this tradition, Congress enacted the International Emergency Economic Powers Act (IEEPA) in 1977.<sup>34</sup> Since the attacks of September 11th, the IEEPA has been amended and expanded by both the USA PATRIOT Act and Presidential Executive Order 13,224.

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25. Cole, *supra* note 21; Richard Willing, *Trial For Muslim Terror Suspects is "Test for Justice": Prosecutors Say Group Belonged to Sleeper Cell*, USA TODAY, Mar. 18, 2003, at A11 (preventing suspects who supply material support to terrorists is necessary to avert future terror attacks).

26. Yasser el-Banna, *supra* note 1.

27. International Emergency Economic Powers Act (IEEPA), 50 U.S.C. § 1701-1707 (2004).

28. Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT) of 2001, Pub. L. 107-56, 115 Stat. 272.

29. Exec. Order No. 13,224, 66 Fed. Reg. 49,079 (Sept. 23, 2001).

30. *Global Relief Found. v. O'Neill*, 207 F. Supp. 2d 779, 794 (N.D. Ill. 2002); *Holy Land Found. for Relief & Dev. v. Ashcroft*, 219 F. Supp. 2d 57, 69 n.14 (D.D.C. 2002).

31. *See infra*, Part III, section B.

32. *See infra*, Part III, section A.

33. *Dames & Moore v. Regan*, 453 U.S. 654, 658 (1981).

34. 50 U.S.C. § 1702(a)(1)(B).

Congress enacted the IEEPA in 1977.<sup>35</sup> In general, the IEEPA gave the President the power to regulate international economic dealings in times of national emergencies or when the United States is engaged in war.<sup>36</sup> More specifically, the President can take any measures he deems necessary against a group's or individual's finances, including asset-freezing if the group or individual is suspected of endangering national security.<sup>37</sup> This particular language can be found section 1702(a)(1)(B), which gives the President authority to:

Investigate, regulate, direct, and compel, nullify, void, prevent or prohibit, any acquisition, holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest . . . by any person, or with respect to any property, subject to the jurisdiction of United States.<sup>38</sup>

As the language indicates, Congress has granted enormous powers to the Executive Branch for the purpose of controlling any and all international economic transactions.<sup>39</sup> Furthermore, the Code of Federal Regulations expands this power by providing the definition for "interest" in the context of IEEPA powers.<sup>40</sup> "Interest," under the IEEPA, is defined as "any interest of any nature whatsoever, direct or indirect," which may be interpreted to include "any . . . property, real, personal, or mixed, tangible or intangible, or interests therein, present, future, or contingent."<sup>41</sup> Essentially, the term "interest" is given the broadest possible meaning. The result is that the IEEPA allows the government to block domestic assets belonging to any organization based within in the United States, so long as evidence exists that a foreign country or national has an interest in those assets.<sup>42</sup>

While one may argue that such laws are needed to combat the secretive activities of funding terror, the mechanics of how these laws are carried out provide a recipe for abusive destruction. First, there are no legislative procedures or substantive requirements for determining whether or not an organization's assets will be frozen under the IEEPA.<sup>43</sup> Discretion is

35. *Id.*

36. S. REP. NO. 95-466, at 2 (1977).

37. *Regan v. Wald*, 468 U.S. 222, 228 (1984).

38. *See* 50 U.S.C. § 1702(a)(1)(B).

39. *See* 50 U.S.C. § 1701-1707.

40. 31 C.F.R. §§ 535.311-.312 (2003).

41. *Id.*

42. *Global Relief Found. v. O'Neill*, 207 F. Supp. 2d 779, 794 (N.D. Ill. 2002).

43. *Cole*, *supra* note 21, at 27.



left solely up to the Executive branch.<sup>44</sup> Second, organizations are not made aware that they have been targeted until their assets are actually frozen.<sup>45</sup> Third, once frozen, entities are only provided a fifteen-day window in which to provide counter-evidence.<sup>46</sup> This process is even more stringent considering the fact that an organization must also find competent legal representation within this short limited time frame, and with few resources as a result of the asset-freezing.<sup>47</sup> Although an organization may file a request for an extension, the Office of Foreign Assets Control (OFAC), the same body that blocks the assets, has the discretion to deny the request.<sup>48</sup> Even if an extension is granted by the OFAC, the organization is usually denied its monetary assets to fight the case and most of the evidence used by the government to justify its conduct is classified and unavailable to the organization or its attorneys.<sup>49</sup>

Likely as a result of constitutional concerns, Congress provided a humanitarian exception to the asset-freezing in section 1702(b)(2).<sup>50</sup> Specifically, section 1702(b)(2) states that the authority delegated to the President under the IEEPA is limited, and the Executive may not regulate donations by those individuals who are subject to the United States jurisdiction when the donations constitute medicine, clothing, and food utilized to alleviate human suffering.<sup>51</sup> Nonetheless, if a charitable organization whose assets are blocked wish to utilize this exception, it faces a near impossible task. First, it has little means in which to secure legal counsel simply because it cannot reach its assets. Consequently, these entities will have a difficult time proving that they qualify for the exception.<sup>52</sup> Second, and more importantly, there is an exception to the exception. Section 1702(b)(2) also gives the President the discretion to determine whether or not these donations impair his ability to handle a national emergency, or whether they will be detrimental to the operation

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44. *Id.*

45. USA PATRIOT Act, 115 Stat. 272, 277-78 (amending 50 U.S.C. § 1702(a)(1)(B) and adding 50 U.S.C. § 1702(c)).

46. *Id.*

47. Miriam Rozen, *Foundation Without Representation? Some Law Firms Are Wary of Taking Clients Accused of Terrorist Ties*, TEX. LAW., Dec. 17, 2001, at 1.

48. Holy Land Found. for Relief & Dev. v. Ashcroft, 219 F. Supp. 2d 57, 66 n.8 (D.D.C. 2002).

49. *Global Relief Found.*, 207 F. Supp. 2d at 794.

50. 50 U.S.C. § 1702(b)(2).

51. *Id.*

52. *See Ashcroft*, 219 F. Supp. 2d at 69 n.14 (reasoning that the 1702(b)(2) exception in the IEEPA is meaningless if the organization is unable to access its bank accounts and financial resources).

of the armed forces of the United States.<sup>53</sup> If it is legitimized under these circumstances, the President can essentially block a variety of transactions, even those primarily conducted for humanitarian ends.<sup>54</sup>

Clearly, the interests of national security trump any financial freedoms traditionally guaranteed to charities. The culmination of powers laid out in the IEEPA gives the President, the Secretary of the Treasury, and the OFAC close to complete, unchecked command over international financial transactions, including the power to effectively deny any reasonable opportunity for an affected organizations to defend itself.<sup>55</sup> If the IEEPA legislation was highly susceptible to abuse through political manipulation before,<sup>56</sup> with the passing of Executive Order 13,224 and the USA PATRIOT Act, it has become even more authoritarian.

### B. *Executive Order 13,224*

Following the terrorist attacks of September 11, 2001, the IEEPA was amended by the President's issuance of Executive Order 13,224.<sup>57</sup> The Executive Order gave the Secretary of the Treasury all the powers granted to the President under the IEEPA.<sup>58</sup> In turn, the Secretary of the Treasury, with his newly granted powers, authorized the OFAC to begin announcing regulations concerning the sanctions program.<sup>59</sup>

### C. *The USA PATRIOT Act*

The IEEPA was further amended with the passing of the USA PATRIOT Act, which provided the President and his designees with an expansion of the powers used in dealing with terror threats.<sup>60</sup> The USA PATRIOT Act amended the IEEPA by adding the words, "block during the pendency of an investigation," following the word "investigate" in section 1702(a)(1)(b) of the IEEPA.<sup>61</sup> This has the effect of not only providing the President with the power to control international economic transactions, but it also permits the exercise of this power without any preliminary investigation.<sup>62</sup> In essence, under the current laws, it is ac-

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53. 50 U.S.C. § 1702(b)(2)(A)-(C); *Veterans Peace Convoy v. Schultz*, 722 F. Supp. 1425, 1429 (S.D. Tex. 1998).

54. 50 U.S.C. § 1702(b)(2)(A).

55. *Ashcroft*, 219 F. Supp. 2d at 65-66.

56. Susan M. Akram, *Scheherezade Meets Kafka: The Two Dozen Sordid Tales of Ideological Exclusion*, 14 GEO. IMMIGR. L.J. 51, 70-71 n.113 (1999).

57. Exec. Order No. 13,224, *supra* note 29.

58. *Id.*

59. *See generally* 31 C.F.R. § 500.01 et seq. (2003).

60. USA PATRIOT Act, 115 Stat. 272.

61. 50 U.S.C. § 1702(a)(1)(B).

62. USA PATRIOT Act, 115 Stat. 272.

ceptable for the government to shoot first and ask questions later. In other words, no entity is safe from federal economic control until after action has been taken.<sup>63</sup>

What has occurred from the inception of the IEEPA is the granting of vast power to the President over property involved in international transactions, with subsequent expansions of this power following September 11, 2001, by both President Bush's Executive Order 13,224 and the USA PATRIOT Act.

### III. THE LEGAL IMPACT

*"Where law ends, tyranny begins."*

-William Pitt

#### A. *First Amendment Issues*

The First Amendment of the U.S. Constitution guarantees fundamental freedoms, including freedom of speech, association, and religion.<sup>64</sup> A number of these freedoms may be at stake if the government's current conduct remains unchecked.<sup>65</sup> Despite the fact that several federal courts have sided with the government on free speech and association grounds,<sup>66</sup> a strong case can be made that the IEEPA, as it now stands, violates the right of religious freedoms.

The First Amendment's stance on religion includes not only the freedom to believe, but also the freedom to exercise.<sup>67</sup> Moreover, the Supreme Court has ruled that even when a statute is neutral on its face, the First Amendment may still be violated if the statute unduly burdens the practice of religion.<sup>68</sup> The use of the anti-terror legislation discussed here, while not facially directed towards any particular religious group, may have the effect of impinging on the free practice of religion by many Muslims.<sup>69</sup>

To better understand how Muslims' free exercise of Islam is burdened by the government's current actions, one must have an understanding of

63. *Id.*

64. U.S. CONST. amend. I.

65. *Kusper v. Pontikes*, 414 U.S. 51, 56 (1973).

66. *Global Relief Found. v. O'Neill*, 207 F. Supp. 2d 779, 794 (N.D. Ill. 2002); *Holy Land Found. for Relief & Dev. v. Ashcroft*, 219 F. Supp. 2d 57, 65-66 (D.D.C. 2002).

67. *Jimmy Swaggert Ministries v. Bd. of Equalization*, 493 U.S. 378, 384 (1990).

68. *Id.*

69. Laurie Goodstein, *Muslims Hesitating on Gifts as U.S. Scrutinizes Charities*, N.Y. TIMES, Apr. 17, 2003, at B1; Madhu Krishnamurthy, *Fears About Charities Force Muslims to Change How They Give*, DAILY HERALD, Nov. 11, 2003, at 1.

“*zakat*” and its place in the practice of Islam.<sup>70</sup> *Zakat*, also known as alms-giving, is regarded as the third pillar of Islam.<sup>71</sup> It creates an obligation for Muslims to donate two and one-half percent of their annual income to charity.<sup>72</sup> The Government’s financial war on terror, particularly the freezing of assets during the pendency of an investigation, can be seen as unduly burdening this obligation of Islamic faith. The current restrictions imposed on Islamic charities give donors who wish to provide *zakat* less opportunity to fulfill their religious obligation. Accordingly, Muslims are faced with significant difficulties in practicing an essential part of their religion.

### B. *Denial of Due Process*

The actions allowed by the IEEPA not only impact the Muslim’s free practice of religion, they also present significant Due Process concerns.<sup>73</sup> Specifically, issues pertaining to notice and hearing arise out of the procedures set forth in the IEEPA. Furthermore, the IEEPA not only allows the blocking of assets and domination of international financial transactions involving American entities, it also provides little recourse to challenge the occurrence of such actions.<sup>74</sup>

According to the Fifth Amendment of the United States Constitution, “[N]o person shall . . . be deprived of life, liberty, or property, without due process of law.”<sup>75</sup> The requirement that the government afford notice and an opportunity to be heard before depriving persons of their property interests is inherent in the right of due process.<sup>76</sup> What process is due depends on the circumstances. In general, before the government can take away an organization’s property, it must provide the organization a pre-deprivation hearing, and the hearing must be conducted at “a

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70. Jason Morgan-Foster, *A New Perspective on the Universality Debate: Reverse Moderate Relativism in the Islamic Context*, 10 ILSA J. INT’L & COMP. L. 35, 50 (2003).

71. The five pillars of Islam are “the profession of faith (shahada), prayer (salat) facing Mecca five times a day and a prayer in the community on Friday at noon, almsgiving (zakat), fasting during the month of Ramadan, and making a hajj pilgrimage to Mecca at least once in a lifetime if physically and financially able.” Morgan-Foster, *supra* note 70, at 50.

72. Nina J. Crimm, *High Alert: The Government’s War on the Financing of Terrorism and its Implications for Donors, Domestic Charitable Organizations, and Global Philanthropy*, 45 WM. & MARY L. REV. 1341, 1349 (2004).

73. See generally, Stanley J. Marcuss, *Grist for the Litigation Mill in U.S. Economic Sanctions Programs*, 30 LAW & POL’Y INT’L BUS. 501 (1999).

74. See *id.* at 521-23.

75. U.S. CONST. amend. V.

76. *United States v. James Daniel Good Real Prop.*, 510 U.S. 43, 62 (1993); *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 533 (1985).

meaningful time and in a meaningful manner.”<sup>77</sup> Nonetheless, the Supreme Court has found that pre-deprivation procedures may be dispensed with if there is a need for immediate action by the government.<sup>78</sup>

In deciding whether the interests at stake are great enough to forgo a pre-deprivation hearing, the Court laid out a three-part balancing test in *Mathews v. Eldridge*.<sup>79</sup> First, a court must consider the effects that the proposed official action will have on the private interest.<sup>80</sup> Second, a court must weigh the risks associated with the deprivation alongside the probable value of any extra or substantial procedural safeguards.<sup>81</sup> Finally, the court must weigh the government’s interest in conjunction with any fiscal or administrative hardship that may result from additional or substantive procedures.<sup>82</sup> In the event that the pre-deprivation hearing is denied after the balancing test is performed, a post-deprivation hearing must be conducted in order to satisfy the requirements of due process.<sup>83</sup>

As discussed above, the IEEPA effectively allows the government to take actions against charitable organizations *ex parte*. Since the IEEPA allows for *ex parte* action, the organization is usually not aware of its status as an alleged abettor of terrorism until the exact moment its assets are frozen.<sup>84</sup> Thus, it can be argued that the freezing of assets allowed by the IEEPA and its subsequent expansions—if viewed by the Supreme Court—may be found to violate due process by not affording adequate notice or a chance to plead a case prior to the seizing of its property.

An example of the government’s use of the law in carrying out its current strategy is evident from past actions against the Global Relief Foundation, a charitable organization suspected of funneling money to terrorist groups.<sup>85</sup> In *Global Relief Foundation v. O’Neill*, the Office of Foreign Assets Control (OFAC) froze the foundation’s assets after giving only several hours notice.<sup>86</sup> In short, the notice was inadequate and Global Relief Foundation had no real opportunity to complain.<sup>87</sup> During

77. *James Daniel Good Real Prop.*, 510 U.S. at 62; *Calero-Toledo v. Pearson Yacht Leasing Co.*, 416 U.S. 663, 679 (1974); *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965).

78. *James Daniel Good Real Prop.*, 510 U.S. at 56; *Calero-Toledo*, 416 U.S. at 679.

79. *Mathews v. Eldridge*, 424 U.S. 319, 321 (1976); *Goldberg v. Kelly*, 397 U.S. 254, 266 (1970).

80. *Mathews*, 424 U.S. at 321.

81. *Id.*

82. *Id.*

83. *Gilbert v. Homar*, 520 U.S. 924, 930 (1997).

84. See *Global Relief Found. v. O’Neill*, 207 F. Supp. 2d 779, 785 (N.D. Ill. 2002); *Holy Land Found. for Relief & Dev. v. Ashcroft*, 219 F. Supp. 2d 57, 65-66 (D.D.C. 2002) (noting that government froze organization’s assets at the initiation of its investigation).

85. See generally *Global Relief Found.*, 207 F. Supp. 2d at 779.

86. *Id.* at 784-86.

87. *Id.* at 794.

a subsequent proceeding, the District Court for the Northern District of Illinois upheld the government's actions under the IEEPA and Executive Order 13,224, stating that since foreign nationals had an interest in the operation of the Global Relief Foundation, the Government actions were proper.<sup>88</sup>

Although post-deprivation hearings are permitted when exigent circumstances do not allow for a pre-deprivation hearing, conducting a post-deprivation hearing is problematic for Islamic charities for a number of reasons. First is the idea that irreparable damage has already been inflicted upon the charity.<sup>89</sup> In other words, once the assets have been frozen and an alleged tie to terrorism is announced to the public, that charitable organization is forever stigmatized as an abettor to terrorism.<sup>90</sup> Even if found to be wrongfully accused, potential donors may still hold reservations about donating to a particular charity due to the fear of future investigation, conviction, and civil liability for aiding and abetting terrorist organizations.<sup>91</sup> Second, the person responsible for reviewing the challenge is the same individual who originally issued the blocking order—the Director of the OFAC. Logically, it is to be expected that the person who initially labeled an organization as an abettor to terrorism will reaffirm his or her decision in the review process. Third, the post-deprivation procedure conducted in *Global Relief Foundation* appear to be mere window dressings—the investigation may already be complete by the time an effective argument can be presented.<sup>92</sup> Finally, during the period when a charity's guilt or innocence is being determined and its assets are blocked, thousands of people across the world are unjustly deprived of much-needed aid, irrespective of the targeted organization's innocence.

#### IV. THE HUMAN IMPACT

*“Where there is Hunger, Law is not regarded; and where Law is not regarded, there will be Hunger.”*

-Benjamin Franklin

As intuition suggests, the majority of charities that were under investigation by the Financial Action Task Force,<sup>93</sup> and subjected to *ex parte*

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88. See generally *id.*

89. See Eggen & Mintz, *surpa* note 6.

90. See *id.*

91. *Id.*

92. See *Global Relief Found.*, 207 F. Supp. 2d at 784-86.

93. The Financial Action Task Force (FATF) is an inter-governmental body whose purpose is the development and promotion of policies, both at national and international levels, to combat money laundering and terrorist financing. The Task Force is therefore a

asset-freezing, are associated with Islam.<sup>94</sup> As of February 2003, the Department of Justice had frozen \$113 million in assets belonging to sixty-two organizations that had allegedly supported terrorism.<sup>95</sup> In some cases, these assets were seized based on allegations, confessions, and paper trails.<sup>96</sup> Not only have innocent charities suffered irreparable damage to their reputations due to public allegations of ties with terrorist organizations, they have also lost the ability to operate during the pendency of investigations into those allegations.<sup>97</sup> As a result, the IEEPA does much more than fight the financial war on terrorism.<sup>98</sup>

While some Islamic charities have funneled money to terror cells under the guise of charity, the legislation discussed here affects Muslims disproportionately greater than any other ethnic group, in part due to the deeply rooted American stereotypes and often paranoia towards those of the Islamic faith. When this poorly designed legislative framework is added to preexisting misconceptions and biases toward Muslims, there is a great opportunity for injustice to swallow the vast majority of law-abiding people of Islamic faith.

#### A. *The Targeting of Muslims and Middle Easterners*

Americans have become increasingly fearful of Muslims and Middle Easterners living in the United States.<sup>99</sup> More recently, this fear has escalated into paranoia, as evidenced by the number of hate crimes committed against these groups.<sup>100</sup> As history has demonstrated, facilitating such attitudes can have horrific effects.<sup>101</sup> The hatred and prejudice that

“policy-making body” which works to generate the necessary political will to bring about national legislative and regulatory reforms in these areas. *See generally Financial Action Task Force*, available at [www.fatf-gafi.org](http://www.fatf-gafi.org) (last visited Mar. 28, 2005).

94. *The Iceberg Beneath the Charity*, *ECONOMIST*, Mar. 15, 2003, available at [http://www.economist.com/finance/displayStory.cfm?story\\_id=1632610](http://www.economist.com/finance/displayStory.cfm?story_id=1632610) (last visited Mar. 25, 2005).

95. Press Release, United States Department of Justice (Feb. 2003) (on file with author) [hereinafter Press Release].

96. *Id.*; William March, *Al-Arian Inquiry Took Turn After 9/11*, *TAMPA TRIB.*, Feb. 23, 2003, at 1.

97. *See generally* Eggen & Mintz, *surpa* note 6.

98. *See id.*

99. AMERICAN-ARAB ANTI-DISCRIMINATION COMMITTEE, 1996-97 REPORT ON HATE CRIMES & DISCRIMINATION AGAINST ARAB-AMERICANS 32 (1997) (on file with author).

100. *Id.* (recounting the burning down of a mosque in California, the attempted bombing of a Islamic Center in Colorado, and the shooting of a Muslim worshipper in a mosque in Tennessee). *But see*, Federal Bureau of Investigation, Hate Crime Statistics 2003 (on file with author) (proposing that the number of hate crimes against Muslims and people of Middle Eastern descent are not as large as many claim).

101. Natsu Taylor Saito, Comment, *Alien and Non-Alien Alike: Citizenship, “Foreignness,” and Racial Hierarchy in American Law*, 76 *OR. L. REV.* 261, 278 (1997).

permeates American society today echoes past ideologies that contributed to the enslavement of African-Americans,<sup>102</sup> the exclusion of the Chinese,<sup>103</sup> and the imprisonment of Japanese-Americans during World War II.<sup>104</sup> Those events often plague societies in times of war. As the United States arrives at yet another critical juncture in the War on Terror, we must consider how we will respond to the phenomenon of collective paranoia.

A surprising statistic arises upon examination of the number of designated foreign terrorist organizations (FTOs).<sup>105</sup> As of November 9, 2004, twenty-five out of the thirty-nine organizations deemed to be foreign terrorist organizations had some affiliation with Islam or operation in the Middle East.<sup>106</sup> It is important to understand that many of these groups deemed to be foreign terrorist organizations operate close in proximity to where American-based Islamic charities send their aid. Therefore, it is likely that those American-based Islamic charitable contributions are more susceptible to falling into the hands of terrorists in those locations because terrorists and their sympathizers are more prevalent and established in those areas.<sup>107</sup> In fact, it is unimaginable that these terrorists, who have absolutely no regard for human rights, would not coerce such funds if the opportunity presented itself.<sup>108</sup> Thus, Islamic Charities are more susceptible to be targets by the United States government under the IEEPA.

In addition, the statistical fact that most groups designated as FTO's have Islamic or Middle Eastern backgrounds speaks to an American disposition that views Muslims and Middle-Easterners as terrorists.<sup>109</sup> Interestingly, this is the case even when the overwhelming majority of terrorist acts in the continental United States over the past twenty years have been carried out by Americans and Christians, such as Timothy McVeigh and the D.C. Sniper.<sup>110</sup> While many Americans believe that Islam's purpose

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102. KENNETH L. KARST, *BELONGING TO AMERICA: EQUAL CITIZENSHIP AND THE CONSTITUTION* 1-2 (1989).

103. Saito, *supra* note 101, at 278.

104. Eugene v. Rostow, *The Japanese American Cases-A Disaster*, 54 *YALE L.J.* 489, 490 (1945).

105. Press Release, *supra* note 95.

106. 69 Fed. Register 64873 (Nov. 9, 2004).

107. Press Release, *supra* note 95.

108. *Id.*

109. Suad Joseph, *Against the Grain of the Nation-The Arab*, in *ARABS IN AMERICA: BUILDING A NEW FUTURE* 261 (Michael W. Suleiman ed., 1999).

110. Counterterrorism Threat Assessment and Warning Unit, U.S. Dep't of Justice, *Terrorism in the United States: 1998* (1998), at 23, available at <http://www.fbi.gov/publications/terror/terror98.pdf> (last visited Mar. 25, 2005).



is to wage war on the United States,<sup>111</sup> Islamic terrorists constitute only a minority of Islam.<sup>112</sup>

Perhaps it is not American racism or anti-Islamic sentiment that fuels the paranoia process, but rather the contemporary reality of a nation at war with Al-Qa'eda.<sup>113</sup> If they are correct, how do they explain the fact that other multi-purpose organizations that used terror as a tool are not treated in the same manner as those of Islamic or Middle Eastern background?<sup>114</sup> As wisely noted by another author commenting on this phenomenon:

The Provisional Irish Army (PIRA) is a multi-purpose organization in Ireland that operates similarly to HAMAS (also known as the Islamic Resistance Movement) in Israeli-occupied Palestine. In addition to providing the population with humanitarian aid, PIRA has been held responsible for numerous terrorist attacks. In contrast to HAMAS' designation, however, the Secretary of State has not designated PIRA as a foreign terrorist organization.<sup>115</sup>

There are other groups across the globe that also utilize terror to effectuate their political or social agendas, yet they are not labeled as foreign terrorist organizations.<sup>116</sup> Even those organizations deemed to be FTOs that are not Islamic or Middle Eastern in nature are given preferential treatment, enjoying luxuries such as entrance into the United States to tour and raise funds for their causes.<sup>117</sup> Many Muslim communities view this as proof that America suspects and distrusts Muslims, and particu-

111. Suad Joseph, *supra* note 109. There are those that have argued Islam has replaced the Soviet Union as the "evil empire." *Id.* Muslims are often seen as militaristic, mindless, and fanatical followers of insane clerics, bent on engaging the West in a holy war. *Id.*

112. See generally Ali M. Mazuri, *Is There a Muslim-American Identity?: Shared Consciousness Between Hope and Pain*, 8 J. ISLAMIC L. & CULTURE 65 (2003).

113. See generally *Foreign Terrorists in America: Five Years After the World Trade Center Bombing: Hearing Before the S. Subcomm. on Terrorism, Technology, and Government Information of the S. Judiciary Comm.*, 105th Cong. (1998).

114. But see JEFFREY F. ADDICOTT, *supra* note 10, at 11-12 for the reasons why the type of terrorism invoked by Al-Qa'eda-styled terrorism is more dangerous than traditional forms of terrorism.

115. Aziz, *supra* note 1, at 70. But see JEFFREY F. ADDICOTT, *supra* note 10, at 11-12 (noting that Al-Qa'eda-styled terrorism is more dangerous than traditional forms of terrorism and directly threatens the citizens and interests of the United States).

116. Aziz, *supra* note 1, at 70.

117. See Dean E. Murphy, *Terror Label No Hindrance to Anti-Arab Jewish Group*, N.Y. TIMES, Dec. 19, 2000, at A1. But see JEFFREY F. ADDICOTT, *supra* note 10, at 11-12 (noting that the United States has declared war against Al-Qa'eda-styled terrorism, not other smaller domestic groups).

larly Middle-Easterners.<sup>118</sup> According to one member of the American Muslim Alliance, “Muslim-Americans and Arab Americans are being muddied and universally associated with acts of terrorism.”<sup>119</sup> Moreover, by allowing this type of stigmatization, we may be raising a culture that will view Muslims and Middle-Easterners as inferior.<sup>120</sup>

### B. *The Donors*

Aside from the adverse effect on innocent charities, innocent donors to these organizations are also heavily affected. As noted previously, there are a number of groups suffering directly or indirectly under the current actions of the United States government in freezing assets belonging to innocent charities and, for that matter, charities that only partially fund terror.<sup>121</sup> As stated previously, many donors who seek to fulfill their obligation to provide *zakat* are unduly burdened.<sup>122</sup> The burden comes to fruition when Muslim donors decide where to give their alms. Many of them prefer to provide it to impoverished Muslims living in the Middle East, despite the fear that part of their donations may fall into the hands of terrorists.<sup>123</sup> However, these donors are denied access to a larger number of charitable organizations as a result of the IEEPA.<sup>124</sup>

The current laws foster the view that people should not give at all if it is likely that their donations will end up in the hands of terrorists.<sup>125</sup> According to Yasser Tabbara of the Chicago chapter of the Council on American Islamic Relations, “The process for determining if these charities have terrorist ties is secret. . . . [I]t makes people nervous, and creates the perception that you just shouldn’t give at all.”<sup>126</sup> Seemingly, Muslims have developed a sense of paranoia about giving alms, thereby

118. Muslim Civil Rights Center, *List of Muslim Groups Being Probed by Senate Committee* (Jan. 15, 2004) (on file with author); see also Susan Aschoff, *At Last Unveiled, Evidence Falls Short*, ST. PETERSBURG TIMES, Oct. 4, 1998, at 1A.

119. Anthony York, *Muslims Charge They Are Being Scapegoated* (Nov. 2, 2000), at <http://archive.salon.com/politics/feature/2000/11/02/ama/> (last visited Mar. 25, 2005).

120. Cf. *Brown v. Bd. of Educ.*, 347 U.S. 483, 494 (1954).

121. See Manuel Roig-Franza, *Florida Arrest Renews Debate Over Muslim Charities: Entrepreneur’s Donations Linked to Supporting Terror*, WASH. POST, Jan. 4, 2003, at A1; see also Goodstein, *supra* note 69.

122. See Goodstein, *supra* note 69.

123. See *id.* (acknowledging that many Muslims want to donate to humanitarian groups working in the Middle East).

124. See Allison Hantschel, *Local Muslims Denied List of ‘Safe’ Charities* (Oct. 21, 2004), at [www.cairchicago.org/inthenews.php?file=dst10212004](http://www.cairchicago.org/inthenews.php?file=dst10212004) (last visited Mar. 25, 2005).

125. See Roig-Franza, *supra* note 121; see also Allison Hantschel, *Local Muslims Denied List of ‘Safe’ Charities* (Oct. 21, 2004), at [www.cairchicago.org/inthenews.php?file=dst10212004](http://www.cairchicago.org/inthenews.php?file=dst10212004) (last visited Mar. 25, 2005).

126. Allison Hantschel, *supra* note 124.

hindering the practice of their fundamental religious obligation. If the current situation continues, Muslim-Americans will be too afraid to fulfill their religious duties freely for fear of criminal and civil liability.<sup>127</sup>

Often times, donors' contributions are a form of political, social, or religious expression.<sup>128</sup> Moreover, many donors feel that donations should go towards recipients outside of the United States because this country and its people are relatively wealthy compared to the rest of the world.<sup>129</sup> For many of these individuals, Muslim charities are the most often utilized agents to accomplish this donor intent.<sup>130</sup> Some Muslims have gone as far as to personally visit the persons or institutions where their donations are intended to benefit in an attempt to ensure that the donations are received in the proper hands.<sup>131</sup> While this is a viable means to protect oneself from liability, it is not a feasible option for most Muslim-Americans who cannot afford the luxury of an overseas trip.<sup>132</sup>

### C. *The Recipients*

In addition to the IEEPA's impact on Islamic-American donors, the denial of much needed humanitarian relief has drastic effects on Muslims living in other parts of the world, particularly those Palestinians living under horrendous conditions in settlements across Israel.<sup>133</sup> At the end of the day, the recipients of the humanitarian aid become the real victims. Millions of people living in some of the most impoverished regions of the world desperately rely on the aid provided by American-based Islamic charities for food, shelter, and medicine.<sup>134</sup> Unfortunately, this aid is diminishing substantially.<sup>135</sup>

The curtailing of humanitarian aid to those populations who desperately need it is, without question, the severest consequence of the new legislation. Rather than attempting to alleviate the suffering, the United States may have caused greater problems for populations around the world by making them desitute.<sup>136</sup> More fundamentally, this increase in poverty and grief provides fuel to the fire from which Islamic fundamen-

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127. See Goodstein, *supra* note 69.

128. Roig-Franza, *supra* note 121, at A4; Aziz, *supra* note 1, at 46 n.5.

129. Allison Hantschel, *supra* note 124.

130. *Id.*

131. *Id.*

132. *Id.*

133. Palestine Econ. Policy Research Inst. (MAS) & The World Bank, *Development Under Adversity: The Palestinian Economy in Transition* (Ishac Diwan & Radwan A. Shaban eds., 1999), available at <http://www.palecon.org/wbdocs>.

134. Yasser el-Banna, *supra* note 1; Aziz, *supra* note 1, at 54.

135. *Id.*; Aziz, *supra* note 1, at 54.

136. Yasser el-Banna, *supra* note 1; Aziz, *supra* note 1, at 87.

talists can support their cause.<sup>137</sup> In this condition, a paradigm of haves verses have-nots is clearly shown. The combination of devastating conditions and constriction of aid pushes young men and women to be susceptible to extremists. In short, they will likely blame the United States.

The reality is that the legislation discussed earlier affects more than people's rights—it has a much deeper backlash. While the infringement of certain civil liberties is indeed a cause for concern, it pales in comparison to the effect upon those whose dependency on charity is often a matter of hunger or nutrition, sickness or health, and life or death.<sup>138</sup>

People living in the Middle East have endured tremendous hardships, particularly since the end of World War II. Some believe that the hardship is caused by the foreign policies of western nations, specifically the United States.<sup>139</sup> The Palestinian people, in particular, have suffered under the aggressive policies of the newly formed Israeli state<sup>140</sup> through a number of wars between Israel and neighboring Arab states,<sup>141</sup> and by an ongoing campaign of terror staged by their own people and Islamic extremists.<sup>142</sup> These numerous terror attacks aimed against Israel by Palestinian terrorists have led to violent retaliations by the Israeli government, and have been used as a justification for many hard-line Israeli policies.<sup>143</sup>

This has torn and impoverished areas such as the West Bank and Gaza Strip.<sup>144</sup> In these areas, multi-purpose organizations with terrorist ties

137. Stansfield Turner, *Do Not Bow Down to Terrorism*, ST. LOUIS DISPATCH, Mar. 14, 1993, at 3B. *But see* JEFFREY F. ADDICOTT, *supra* note 10, at 41-43 (discussing key reasons for why terrorists hate the United States).

138. Yasser el-Banna, *supra* note 1; Palestine Econ. Policy Research Inst. (MAS) & World Bank, *supra* note 133.

139. Sheldon L. Richman, "Ancient History": *U.S. Conduct in the Middle East since World War II and the Folly of Intervention* (Aug. 16, 1991), at [www.cato.org/pub\\_display.php?pub\\_id=1019&full=1](http://www.cato.org/pub_display.php?pub_id=1019&full=1) (last visited Mar. 25, 2005).

140. *But see* ARIE ARNON, *THE PALESTINIAN ECONOMY: BETWEEN IMPOSED INTEGRATION AND VOLUNTARY SEPARATION* 21 (1997); Barbra Kotschwar, *Small Countries and the Free Trade Area of the Americas*, in *TRADE RULES IN THE MAKING: CHALLENGES IN REGIONAL AND MULTILATERAL NEGOTIATIONS* 134-36 (Miguel Rodriguez Mendoza et al. eds., 1999) (showing that under the Israeli occupation the Palestinian economy has grown at a rapid rate).

141. *But see* JOHN MOORE, *THE ARAB-ISRAELI CONFLICT*, VOL. II 5-21 (1974) (detailing the Arab-Israeli wars that took place between 1947 and 1974).

142. Maureen Haydeen, *Ramadan's Tradition in Turmoil*, COURIER & PRESS NEWS, Oct. 27, 2003, at [www.mpac.org/media\\_article\\_display.aspx?ITEM=619](http://www.mpac.org/media_article_display.aspx?ITEM=619) (last visited Mar. 25, 2005).

143. *Id.*

144. *See generally* Palestine Econ. Policy Research Inst. (MAS) & World Bank, *supra* note 133.

operate to provide aid to the Palestinian population.<sup>145</sup> For example, HAMAS is and has been for some time deemed a foreign terrorist organization.<sup>146</sup> However, much of what HAMAS does is related to providing aid and relief for the impoverished Palestinians of this region.<sup>147</sup> Only a very small percentage of HAMAS' operations deal with activities that could be construed as terrorist-like in nature, while the bulk of their work consists of humanitarian relief.<sup>148</sup>

However, the United States' legislation that concerns abettors of terrorist organizations does not distinguish between individuals supporting an alleged terrorist organization and individuals who only support the humanitarian aims of such an organization.<sup>149</sup> If any support is provided to a foreign terrorist organization or a specifically designated global terrorist, the individual or entity providing the material support is automatically guilty of aiding and abetting terrorism. The individual or entity becomes liable both criminally and civilly.<sup>150</sup> Considering that the humanitarian value of the aid should outweigh the risk against the potential ties of these organizations to terrorist groups, perhaps the intent of the donor should be a deciding factor, rather than the current all or nothing standard.

In regards to the mistakes made in connection with organizations providing material support for terrorists, two examples amplify the point. The first is the seizing of assets belonging to the largest American-based Somalian money-transfer company, Al-Barakaat.<sup>151</sup> In November 2001, Al-Barakaat's assets were frozen when it was accused of funneling millions of dollars to terrorists.<sup>152</sup> In August 2002, it was found that Al-Barakaat was a legitimate organization that provided money-transferring services between Somalians living in the United States and their family members living in Somalia.<sup>153</sup> Thus, the assets were unnecessarily frozen and those Somalians who needed money were unduly burdened. The sec-

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145. Brody, *supra* note 24, at 1262-63.

146. 62 Fed. Reg. 52650 (Oct. 8, 1997).

147. Ian Fisher, *Defining Hamas: Roots in Charity and Branches of Violence*, N.Y. TIMES, June 16, 2003, at A8.

148. *Id.* But see JEFFREY F. ADDICOTT, *supra* note 10, at 9-10 (contending that HAMAS is a group whose ultimate goal is to destroy the State of Israel).

149. Benjamin Duncan, *US Islamic Charities in Trouble*, at <http://english.aljazeera.net/NR/exers/F447DB5C-38CB-472C-AD9E-C22B75D17E56.htm> (last visited Mar. 25, 2005).

150. Foreign Intelligence Surveillance Act, 50 U.S.C. § 1801-1863 (2004); 50 U.S.C. § 1701-1707.

151. *U.S. Case vs. 4 Area Men Latest of Several Nationally*, POST STANDARD, Mar. 2, 2003, at A16.

152. *Id.*

153. *Id.*

ond example is the case of Jesse Maali.<sup>154</sup> Maali, a United States citizen, was arrested in November 2002 in Orlando, Florida after the government openly accused him of being involved in terrorist related activities.<sup>155</sup> Although the case has not yet gone to trial, the damage has already been done.<sup>156</sup> These accusations have forever stigmatized Mr. Maali and catastrophically affected his professional and personal life.<sup>157</sup>

## V. DO THE ENDS JUSTIFY THE MEANS?

*“Injustice anywhere is a threat to justice everywhere.”*

- Martin Luther King, Jr.

While the United States has not suffered another major Al-Qaeda styled terrorist attack since September 11th, the current peace on American soil may not last if the IIEAP continues to be enforced. As shown by the incidents above a number of the cases dealing with the freezing of assets belonging to charitable institutions, the government has failed to garner sufficient evidence to gain convictions.<sup>158</sup> As of late 2003, the yield of convictions stemming from investigations into terrorist related activities has been considerably low.<sup>159</sup> Sixty-four hundred cases were turned over to federal prosecutors during the period between Sept. 11, 2001 and December 2003, but only 879 of them received convictions.<sup>160</sup> Such a low conviction rate demonstrates the over-breadth and inefficacy of the current anti-terror legislation. Some, however, may still argue that this is due to the fact that the terrorists hide and conduct terror activities in secret.<sup>161</sup> The question therefore arises: Is the U.S. willing to tolerate infringements on civil liberties when the rate of success in prosecuting terrorists has been less than fifteen percent?<sup>162</sup>

## VI. CONCLUSION AND PROPOSAL

*“The government of the United States has been emphatically termed a government of laws, and not of men. It will certainly cease to deserve*

154. Roig-Franza, *supra* note 121.

155. *Id.*

156. *See id.*

157. *See id.*

158. Rebecca Carr, *Terrorism Arrests Yield Little Jail Time*, AUSTIN AM.-STATESMAN, Dec. 8, 2003, at A1. *But see generally* ALAN M. DERSHOWITZ, *WHY TERRORISM WORKS: UNDERSTANDING THE THREAT, RESPONDING TO THE CHALLENGE* (2002).

159. Carr, *supra* note 158.

160. Carr, *supra* note 158.

161. Aziz, *supra* note 1.

162. *But see generally* ALAN M. DERSHOWITZ, *supra* note 158 (noting the difficulties in arresting and convicting terrorists and those who aid them).

*this high appellation, if the laws furnish no remedy for the violation of a vested legal right."*

-John Marshall

A reasonable observer understands that the government must fight the phenomenon of Al-Qa'eda-styled terror that is plaguing the international community. Maybe this means that laws must be passed and civil liberty must be burdened to some degree. There is not doubt that terrorism needs to be fought, and terrorists need to be brought to justice. However, in the process of doing so, the government must ensure that protected populations are not alienated and oppressed by the process.

#### A. *Aiding the Process*

There is a definite desire by both the United States and the international community to combat Al-Qa'eda-styled terrorism by all means possible. Muslims in this country understand this desire, realize the scrutiny under which they have been placed, and have cooperatively requested a list of safe charities from which to donate to from the United States Department of Justice.<sup>163</sup> Amazingly, this request was denied.<sup>164</sup> According to United States Department of Justice spokesperson Bryan Sierra, "Our role is to prosecute violations of criminal law. . . . We're not in a position to put out lists of any kind, particularly of any organizations that are good or bad."<sup>165</sup> Many Muslim-Americans feel that this denial makes a mockery of the government's obligation to protect its citizens.<sup>166</sup> They want to both follow the law and properly practice their Islamic religious duties; however, they receive no help from the government in achieving this goal. Effectively, the government is forcing many Muslim-Americans to make a choice to donate at their own risk, donate to a group they would rather not give to, or not donate at all.

To remedy this scenario, the government should 1) provide its citizens with a list of charitable organizations that they may safely send donations to; 2) increase its participation with domestic charitable organizations; and 3) provide the tools for those individuals living in totalitarian states to free themselves of tyranny and establish free democratic societies. Put simply, the government should not shoot charitable organizations down without providing alternatives for both the donors and the recipients. Without alternatives, the government is violating the First Amendment freedoms of Muslim-Americans. This is the bottom line.

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163. Allison Hantschel, *supra* note 124.

164. *Id.*

165. *Id.*

166. *Id.*

### B. *Winning the War on Terror*

By extending the proverbial velvet glove to those desperate for aid around the world, while simultaneously crushing purveyors of terror with an iron gauntlet, the U.S. may achieve two essential objectives for promulgating freedom and security around the world: bringing to justice those who have shown a propensity to engage in terrorist activities and rooting out conditions that foster the spread of terrorism. Essentially, alleviating the socio-economic conditions that give rise to the recruitment of future terrorists would strip terrorism of its most potent weapon—manpower.<sup>167</sup>

This “winning the hearts and minds” strategy is not by any means a new concept to American foreign policy; it is, however, an opportunity that the U.S. government is ignoring by continuing its current legislative strategy. Basically, America will advance its cause just as much, if not more, if it facilitates donors and charities within the United States that promote democracy-building.

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167. Turner, *supra* note 137. *But see* JEFFREY F. ADDICOTT, *supra* note 10, at 41-43.