

August 11, 2010

The President
The White House
1600 Pennsylvania Ave., NW
Washington, DC 20500

Dear Mr. President:

On June 4, 2009, in Cairo, Egypt, you promised to work with the American Muslim community to ease hurdles to charitable giving and protect religious freedom. We, the undersigned charitable, community-based Muslim, Arab, Sikh and South Asian American organizations, welcomed this commitment and have been eager to work with your administration to realize this goal. Unfortunately, more than one year later and as the holy month of Ramadan begins, we are still awaiting substantive, concrete action by the administration to protect innocent donors and charities.

During this holy month of Ramadan, American Muslims turn their focus to spiritual renewal, as well as aiding the needy and building community through *zakat*, or charitable giving, a religious and civic obligation for American Muslims. Like other ethnic and religious communities in the United States, charitable, community-based organizations are the backbone of the American Muslim community. These organizations feed the hungry, care for the sick, fulfill spiritual needs, and serve as ambassadors to those abroad. As Secretary of State Hillary Clinton recently stated, “supporting civil society groups is a critical part of our work to advance democracy.”¹ Yet, hurdles remain for American Muslim organizations to participate fully and to help advance democracy in the U.S. and throughout the world.

At this time, federal investigations and intelligence-gathering activities continue to interfere with the day-to-day charitable activities of American Muslims and obstruct our ability to build and support strong civic institutions. These hurdles include:

- massive data gathering by the FBI on mosques, Muslim charities, and charitable giving practices (without any evidence of wrongdoing);²
- broad-based FBI investigations of legitimate charitable activities;³
- questioning by Customs & Border Protection (CBP) agents of American Muslims

¹ U.S. Secretary of State Hillary Rodham Clinton, Address at the Community of Democracies in Krakow, Poland (July 3, 2010).

² See, e.g., *Domestic Investigations and Operations Guide*, issued by the Federal Bureau of Investigation, Dec. 16, 2008, Chapter 4, pp. 32-34, available at http://www.muslimadvocates.org/DIOGs_Chapter4.pdf; Michael Isikoff, “Investigators: The FBI Says, Count the Mosques,” *Newsweek*, Feb. 3, 2003, available at <http://www.newsweek.com/2003/02/02/investigators-the-fbi-says-count-the-mosques.html>.

³ See, e.g., *Blocking Faith, Freezing Charity, Chilling Muslim Charitable Giving in the “War on Terrorism Financing,”* published by the American Civil Liberties Union, June 2009.

- returning home from overseas travel about their charitable giving practices;⁴
- the ability of the government to freeze assets of a charity *without* charge;⁵
- questioning of individuals during citizenship examinations on affiliations with lawful U.S. charities; and
- an archaic and confusing list-checking system donors must navigate prior to giving.

These overly broad and invasive investigative and intelligence-gathering activities create fear, chill charitable activities, and ultimately undermine the continued participation and integration of Muslims in America.

Despite intensive dialogue and the submission of multiple policy proposals by religious, humanitarian and other nonprofit groups, the administration has not yet substantively addressed these problems or changed any policy. In June, for example, the U.S. Department of Treasury released *U.S. Department of the Treasury: Protecting Charitable Giving Frequently Asked Questions (FAQs)* a messaging document intended to clarify policy regarding restricted charities and related prosecutions.⁶ Instead, these FAQs are a continuation of the mixed messages the charitable sector has received from the federal government. On the one hand, the Treasury Department states that its policy is to refrain from taking punitive action against donors where the donor has no knowledge that a charity that is subsequently designated had been engaged in supporting terrorist activity. Any comfort this statement could provide is immediately undercut by the footnote stating that this statement of policy is not intended to be a waiver of criminal investigation or prosecution.⁷

Mr. President, the American Muslim community needs relief. Please fulfill the commitment you made to our communities in June of 2009 to ease hurdles to charitable giving. We respectfully request that you direct the following policy changes:

U.S. Department of Justice & U.S. Department of the Treasury

1. The Justice Department and Treasury Department should issue agency orders providing a safe-harbor for well-intentioned donors.⁸ These orders should specify that donors will not be subject to federal investigation or prosecution provided that the donor

⁴ See, e.g., *Unreasonable Intrusions: Investigating the Politics, Faith & Finances of Americans Returning Home*, published by Muslim Advocates, April 2009, available at http://www.muslimadvocates.org/documents/Unreasonable_Intrusions_2009.pdf.

⁵ ACLU, *Blocking Faith, Freezing Charity- Chilling Muslim Charitable Giving in the "War on Terrorism Financing"*, June 2009 at 39.

⁶ See, *U.S. Department of the Treasury: Protecting Charitable Giving Frequently Asked Questions*, available at <http://www.ustreas.gov/offices/enforcement/key-issues/protecting/docs/Treasury%20Charity%20FAQs%206-4-2010%20FINAL.pdf>.

⁷ *Id.* at 12.

⁸ "Donor" means any United States citizen, individual residing in the United States, church (as defined by the Internal Revenue Code), or U.S. nonprofit entity recognized under Section 501(c)(3) of the Internal Revenue Code, that provides money, items or services to a charitable entity.

makes the contribution of money, items or services to a party that is not on the Prohibited Lists⁹ at the time of contribution. The government can rebut the presumption by showing beyond a reasonable doubt that the donor had actual knowledge that the intended beneficiary was on a Prohibited List at the time of the contribution of money, items or services.

U.S. Department of the Treasury & U.S. Department of State

2. The Treasury Department and State Department, which collectively maintain the various Prohibited Lists, should be directed to create a single, user-friendly, searchable database that compiles all Prohibited Lists in one central location housed with the Office of Foreign Assets Control at the Treasury Department. The database shall be created to ensure ease and accessibility to the prohibited lists by donors and the public, and shall be completed within 60 days. This database shall generate a receipt to the user at the conclusion of a search that a search was conducted and the results of that search.

U.S. Department of the Treasury

3. The Treasury Secretary should withdraw Treasury's vague and quasi-voluntary *Anti-Terrorist Financing Guidelines: Voluntary Best Practices for U.S.-Based Charities*, which chill the delivery of critical humanitarian aid and provide charities with no protection from legal sanction even if the Guidelines are painstakingly followed.

4. By Executive Order, the President should require the Office of Foreign Assets Control ("OFAC") to promulgate fair procedures for Specially Designated Global Terrorist ("SDGT") designation and review.

5. The Treasury Secretary should implement policies to ensure frozen charitable funds held by the Department are released to donors or used for their charitable purpose according to the original donor's intent.

U.S. Department of State

6. The President should direct the Secretary of State to use her authority under 18 USC § 2339B(j) to waive the material-support prohibition for technical advice and assistance, training and personnel where intended for humanitarian purposes and not used to carry out terrorist activity, in order to ensure that well-intentioned charities can deliver essential aid such as water and shelter.

⁹ "Prohibited Lists" refers collectively to the Foreign Terrorist Organization (FTO), Specially Designated Global Terrorist (SDGT), Specially Designated National (SDN), Terrorist Exclusion List (TEL), and Office of Foreign Assets Control (OFAC) Country Sanction Program lists.

U.S. Department of Homeland Security

7. The Secretary should end overbroad searches and invasive interrogations by CBP of law-abiding Americans returning from international travel and prohibit questions about First Amendment-protected religious and political activities, associations and beliefs, including donations to charitable entities.

U.S. Department of Justice

8. The Attorney General and Director of the FBI should amend the Domestic Investigations and Operations Guide (DIOG) to ensure that racial, ethnic and faith communities are not targeted for intelligence-gathering and surveillance, including collecting data on charities, donors and charitable giving practices, without individualized suspicion that criminal activity is taking place.

9. The Attorney General should enforce Justice Department policies requiring that federal prosecutors not disclose the identities of unindicted co-conspirators, given the chilling effect overbroad designations and public disclosure of charitable entities has had on civic participation.

10. The Attorney General should revise the *2003 Guidance Banning Racial Profiling by Federal Law Enforcement* to ensure that racial, ethnic and religious profiling of individuals and organizations is banned in all law enforcement and domestic intelligence activities.

We look forward to hearing from you soon.

Respectfully,

American Muslim Health Professionals
American Pakistan Foundation
American Society for Muslim Advancement
American-Arab Anti-Discrimination Committee
Amoud Foundation
Arab American Institute
Bay Area Association of Muslim Lawyers
Capitol Area Muslim Bar Association
Center for Arab American Philanthropy
Council of Islamic Organizations of Greater Chicago
Council on American-Islamic Relations
EMERGE USA
Florida Muslim Bar Association
The Freedom and Justice Foundation
Georgia Association of Muslim Lawyers

Houston Shifa Services Foundation
Indian Muslim Relief & Charities
Inner-City Muslim Action Network
Islamic Medical Association of North America
Islamic Networks Group
Islamic Relief USA
Islamic Shura Council of Southern California
Islamic Society of Greater Houston
Islamic Society of North America
Michigan Muslim Bar Association
Muslim Advocates
Muslim Alliance of Indiana Legal Services
Muslim Bar Association of Chicago
Muslim Bar Association of New York
Muslim Bar Association of Southern California
Muslim Consultative Network
Muslim Lawyers Association of Houston
Muslim Public Affairs Council
National Muslim Law Students Association
New England Muslim Bar Association
New Jersey Muslim Lawyers Association
Northern California Islamic Council
North Texas Islamic Council
Ohio Muslim Bar Association
Organization of North American Shia Ithna-asheri Muslim Communities
Pakistani American Public Affairs Committee
Sikh Coalition
South Asian Americans Leading Together
Universal Muslim Association of America