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## **Judge Faults Freezing of Assets in Terror Case**

**By [ERIC LICHTBLAU](#)**

WASHINGTON — In a ruling that threw into doubt one of the government's main counterterrorism tools, a federal judge said the Treasury Department acted unconstitutionally three years ago when it froze the assets of an Ohio charity suspected of aiding terrorists.

The ruling challenged a key tactic used by the government under an emergency executive order signed by President [George W. Bush](#) two weeks after the Sept. 11 attacks. If upheld, the ruling could severely undercut the government's authority and ultimately require it to get a warrant and submit to court review in moving against charities.

In the last eight years, the Treasury Department has used its broadened authority to freeze tens of millions of dollars in assets held by eight charities within the United States and hundreds of other groups and individuals outside this country, all without warrants and court approval.

The ruling was issued late Tuesday by James G. Carr, the chief federal judge in northern Ohio. Judge Carr set a hearing in September to determine how to correct what he said were constitutional flaws in the government's case.

Justice Department lawyers were reviewing the opinion. The Treasury Department did not comment directly but said in a statement that it "will continue to employ all authorities at our disposal to track and disrupt the deadly flow of money to terrorist groups."

At issue was a decision in 2006 by the Office of Foreign Asset Control, or OFAC, in the Treasury Department to freeze about \$1 million in assets of KindHearts, a Columbus charity that was part of a terrorism investigation.

The Treasury Department had said that KindHearts provided financial support for [Hamas](#),

described by the United States as a [Palestinian](#) militant group, and coordinated with its leaders in the West Bank and in Lebanon in support of terrorist activities.

To date, the group has not been named a “specially designated global terrorist.” But Judge Carr said the government “has effectively shut KindHearts down” by freezing its assets and criminalizing its contacts.

For two years, KindHearts could not even use its own money to pay lawyers. One lawyer resigned as a result, and the group had to rely on the [American Civil Liberties Union](#). Judge Carr said OFAC was “arbitrary and capricious” in considering whether the group could pay its lawyers.

Judge Carr, named to the bench in 1994 by President [Bill Clinton](#), found that the Treasury Department had also violated the charity’s rights to due process and to challenge evidence.

He rejected the Justice Department’s contention that the Fourth Amendment, which protects against unreasonable searches and seizures, did not apply to groups suspected of foreign terrorist ties because of the president’s separate national security authority.

Citing British seizures and searches without warrants in colonial America, Judge Carr called the Fourth Amendment “a bulwark against the abuses and excesses of unchecked government authority.”

He said that “nothing in our Fourth Amendment jurisprudence or constitutional tradition supports complete elimination” of the need for the government to establish probable cause, allow judicial review and use court warrants in such cases.

Judge Carr also said that the limited information that the Treasury Department provided to the charity about why its assets were frozen came only after “long, unexplained and inexplicable delay” and repeated requests from the group’s lawyers.

Lynne Bernabei, a Washington lawyer who represented KindHearts, said of the ruling: “The government has been taking action unilaterally and basically destroying these charities on the flimsiest of evidence. We see this as the beginning of the effort to rein in executive authority.”

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