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Article published August 20, 2009

U.S. seizure of charity's assets ruled unlawful

Muslim group's rights violated, judge asserts

By [ERICA BLAKE](#)

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The U.S. government violated the constitutional rights of a local Muslim charity when it froze its financial assets in 2006 and prevented it from adequately defending itself against allegations of ties to terrorism, a federal judge in Toledo has ruled.

Judge James Carr released a 100-page order Tuesday that favored arguments by KindHearts for Charitable Humanitarian Development Inc., which sued the government in October.

The ruling, which attorneys have called unprecedented, agreed with the organization's assertions that KindHearts was denied due process and subjected to the unlawful seizure of its property.

However, the ruling did not go so far as to label as unconstitutional or even vague the legislation used by the government to investigate organizations with potential ties to terrorism.

"Judge Carr's historic ruling makes clear that the government can't circumvent the Constitution, which protects us against unreasonable searches and seizures and affords us the due-process rights of notice and a chance to be heard, even when the government invokes national security as an excuse. We should all celebrate the vindication of those crucial principles. As for KindHearts in particular, Judge Carr's ruling is a critical step toward its goal of defending itself against the government's allegations," said Fritz Byers, one of KindHearts' attorneys.

KindHearts, founded in 2002, was targeted in 2006 by federal agents, who in turn froze the charity's financial assets. According to court documents, the organization was under investigation by the Office of Foreign Assets Control of the U.S. Treasury De-partment and would potentially be labeled as a "specially designated global terrorist."

Jihad Smaili, a KindHearts attorney who has since relocated to California, said yesterday that in the days and weeks after the organization's shutdown, he repeatedly tried to learn what evidence had been collected about the group's alleged affiliation with a militant-terrorist group. He said KindHearts was not allowed access to any information, including the group's own seized documents or its funds

to hire attorneys.

"The opinion vindicates KindHearts' position all along, which is that it was shut down without evidence or without any opportunity to present its side to any court," Mr. Smaili said. "And 42 months later, a judge has recognized that there were constitutional violations."

Earlier this year, Judge Carr ordered the government to produce copies of all materials seized in 2006 from KindHearts' headquarters and the home of its president.

The organization's attorneys had argued that without access to the information, it could not defend itself against charges of terrorism by showing where its money was spent. The government countered that opening access could compromise its investigation.

The attorneys, including those from the American Civil Liberties Union, further argued that the government violated search-and-seizure laws when it froze KindHearts' assets without showing probable cause and without obtaining a warrant.

In his order this week, Judge Carr wrote, "KindHearts is indisputably one of 'the people' protected by the Fourth Amendment. If the Constitution affords KindHearts no protection from unreasonable searches and seizures, whom among 'the people' does it protect and who among the people can be certain of its protection?"

The judge further noted that finding the Fourth Amendment inapplicable to the government's "block actions" would disregard its "role as a bulwark against the abuses and excesses of unchecked governmental power."

Charles Miller, a spokesman for the Civil Division of the U.S. Department of Justice, said the lengthy opinion will be analyzed so it is wholly understood. He declined comment on the judge's conclusions.

"We're going to review it and then ultimately make a determination of how the government will proceed in this matter," he said yesterday. "It's not just a simple case of reading it, it's a matter of reading the nuances of what it means and then [figuring] out how to proceed."

Though the judge found the organization's rights were violated, he offered no opinion on to what extent KindHearts suffered as a result of the government's actions. Instead, he asked attorneys for both sides to submit additional information and set a Sept. 21 hearing date to review the matter.

Mr. Smaili said KindHearts had about \$1 million in its coffers in 2006 that was headed to Pakistan for earthquake relief. Though the group now has access to its funds to pay attorneys, he questioned what will happen to the money he said was at one time slated for humanitarian relief efforts.

"It's a great thing to read, but in reality, KindHearts is shut down forever," Mr. Smaili said.

Judge Carr's decision may be appealed to the 6th U.S. Circuit Court of Appeals in Cincinnati. At a May 1 court appearance before the judge in which both sides argued their cases, the government indicated if the judge ruled the freeze of assets lifted, it would request a stay until the appellate court hears the case.

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