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Court Rules Government's Freeze Of Charity's Assets Unconstitutional (8/19/2009)

Treasury Department Violated Fourth And Fifth Amendment Rights Of ACLU Client KindHearts

FOR IMMEDIATE RELEASE

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TOLEDO, OH – A federal court ruled for the first time late Tuesday that the government cannot freeze an organization's assets under a terror financing law without obtaining a warrant based upon probable cause. The court also found that the government must give the organization notice of the basis for freezing its assets and a meaningful opportunity to defend itself. The ruling came in a lawsuit filed in November 2008 by the American Civil Liberties Union, the ACLU of Ohio and several civil rights attorneys on behalf of KindHearts for Charitable Humanitarian Development, Inc., an Ohio-based charity. The U.S. Treasury Department's Office of Foreign Assets Control (OFAC) froze KindHearts' assets three-and-a-half years ago without a warrant, notice or a hearing, based simply on the assertion that OFAC was investigating whether the charity should be designated as a "specially designated global terrorist (SDGT)."

"This historic ruling rejects the government's argument that the Fourth Amendment's prohibition against unreasonable searches and seizures does not apply when a case raises national security and foreign policy concerns," said Hina Shamsi, an ACLU cooperating attorney who argued the case. "The ruling provides a much-needed judicial check on executive power. Until now, the administration has been able to unilaterally and indefinitely freeze the assets of a U.S. corporation without probable cause and a warrant."

KindHearts has never been found to have engaged in any wrongdoing and has never been designated an SDGT, yet it has been effectively shut down since OFAC first froze its assets on February 19, 2006. As a result of the freeze pending investigation, it is a crime for anyone to do any business with KindHearts and the charity has no access to its own property.

"Although KindHearts provided detailed information to the government about KindHearts' operations, and requested that the government specify its reasons for blocking KindHearts' assets pending investigation, the government ignored KindHearts' submissions and repeatedly delayed in responding to its requests," said Alan Kabat of Bernabei & Wachtel, co-counsel for KindHearts. "The court found that the government's actions were fundamental violations of due process."

In Tuesday's ruling, U.S. District Judge James G. Carr of the Northern District of Ohio, Western Division, found that the administration must obtain a warrant based on probable cause before seizing an organization's assets, citing judicial precedent holding that the executive branch's "domestic actions – even when taken in the name of national security – must comport with the Fourth Amendment."

"For years the Treasury Department has exercised unchecked power to shut down charities on unfounded charges of terrorist ties," said Georgetown Law Professor David Cole, co-counsel for KindHearts. "Yesterday's decision declares that such power can be employed only pursuant to the basic constitutional safeguards of probable cause, judicial oversight and due process."

Judge Carr also ruled that OFAC violated the Fifth Amendment's guarantee of due process because it "violated KindHearts' fundamental right to be told on what basis and for what reasons the government deprived it of all access to all its assets and shut down its operations."

"The judge rightly found that the government cannot simply freeze an organization's assets, essentially shutting it down, without providing the organization a meaningful chance to defend itself," said Alexander Abdo, a legal fellow with the ACLU National Security Project. "This ruling underscores what we have said all along – OFAC's unlimited authority to seize a charity's property without due process is unconstitutional."

KindHearts' founders established the charity in 2002 – after the government shut down a number of other charities – with the express purpose of providing humanitarian aid both abroad and in the United States in full compliance with the law. Despite the efforts KindHearts took to implement OFAC policies and even seek its guidance, OFAC froze KindHearts' assets in February 2006.

Other attorneys on the case, now called *KindHearts v. Geithner*, are Ben Wizner of the ACLU, Fritz Byers of Toledo, Ohio; Lynne Bernabei of Bernabei & Wachtel, PLLC in Washington; and Carrie Davis of the ACLU of Ohio.

More information about the case, including Tuesday's ruling, is available online at:

www.aclu.org/kindhearts

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