

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

BENEVOLENCE INTERNATIONAL	)	
FOUNDATION, INC.	)	
	)	
Plaintiff,	)	
	)	
	)	No.
	)	
JOHN ASHCROFT, in his official capacity as	)	
Attorney General of the United States of	)	
America; PAUL H. O'NEILL, in his official	)	
capacity as Secretary of the Treasury of the	)	
United States of America; COLIN L. POWELL,	)	
in his official capacity as Secretary of State of	)	
the United States of America; ROBERT S.	)	
MUELLER, III, in his official capacity as	)	
Director, Federal Bureau of Investigation; and	)	
R. RICHARD NEWCOMB, in his official	)	
capacity as Director, United States Department	)	
of the Treasury, Office of Foreign Asset Control,)	)	
Defendants.	)	

**COMPLAINT**

BENEVOLENCE INTERNATIONAL FOUNDATION, INC. ("BIF"), by counsel, complains of defendants as follows:

**INTRODUCTION**

1. This case challenges the defendants' unconstitutional actions in seizing the property, and blocking the property and activities, of a law-abiding faith-based charity engaged in critical humanitarian work, without a hearing, without meaningful notice or opportunity for a hearing, and without probable cause. BIF seeks a declaration that these actions violate the United States Constitution and federal statutes; an injunction directing defendants to return the seized property and remove the restrictions placed upon BIF and its property; plus attorneys' fees and costs.

## **JURISDICTION**

2. This Court has jurisdiction under 5 U.S.C. §§ 702-704 and 706, 28 U.S.C. §§ 1331, 1346(a)(2), and 1346(b)(1); and 42 U.S.C. § 2000bb-1(c).

## **VENUE**

3. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e)(2) because a substantial part of the events giving rise to plaintiff's claim occurred in this District and the defendants are officers of the United States of America ("United States"), acting in their official capacities. Venue is also proper in this Court pursuant to 28 U.S.C. § 1391(e)(3) because the plaintiff resides in this District and no real property is involved in this action.

## **PARTIES**

4. Plaintiff BIF is a not-for-profit corporation incorporated in the State of Illinois, with its principal place of business in Palos Hills, Illinois. BIF is a charitable organization that has been accorded section 501(c)(3) status by the Internal Revenue Service. It receives funds from private donors and distributes food, clothing, medical services, and other critical assistance to orphans and persons afflicted by wars, natural disasters, and extreme poverty. Since its founding in 1992, BIF has provided tens of millions of dollars worth of humanitarian aid in a dozen countries around the world, as well as in the United States. BIF's activities are entirely lawful, and often are undertaken in partnership with international relief organizations such as the United States Agency for International Development, the United Nations High Commission for Refugees, the United Nations World Food Program, and the United Nations International Children's Emergency Fund.

5. Defendant John Ashcroft ("Ashcroft") is the Attorney General of the United States. He is sued solely in his official capacity.

6. Defendant Paul H. O'Neill ("O'Neill") is the Secretary of the Treasury of the United States. He is sued solely in his official capacity.

7. Defendant Colin L. Powell ("Powell") is the Secretary of State of the United States. He is sued solely in his official capacity.

8. Defendant Robert S. Mueller, III ("Mueller") is the Director of the Federal Bureau of Investigation ("FBI"), an agency of the United States. He is sued solely in his official capacity.

9. Defendant R. Richard Newcomb ("Newcomb") is the Director of the United States Department of the Treasury, Office of Foreign Asset Control ("OFAC"), and is responsible for enforcing the restrictions upon BIF challenged here. He is sued solely in his official capacity.

### **ALLEGATIONS RELEVANT TO ALL COUNTS**

10. BIF does not engage in or fund terrorist activity, or illegal activity of any sort. BIF abhors and categorically opposes terrorism and other acts of violence against human beings.

11. To BIF's knowledge, the government has not made any sort of designation of BIF that indicates that the government believes BIF is engaged in terrorist activity, or is aiding or assisting such activity, such as the designations "Specially Designated Terrorist," see 31 C.F.R. § 595.311, "Specially Designated Global Terrorist," see 31 C.F.R. § 597.309,<sup>1</sup> or "Specially Designated National," see 31 C.F.R. § 500.306.

12. BIF is not owned or controlled by, and does not employ, any person whom the government has designated a Specially Designated Terrorist, Specially Designated Global Terrorist, Specially Designated National, or any other sort of designation that indicates that the government believes that such person is engaged in terrorist activity, or aiding or assisting such activity.

13. BIF has not been charged with, let alone convicted of, any criminal misconduct, or been named as a defendant in any civil lawsuit, by the United States government or anyone else.

14. On December 14, 2001, the FBI searched BIF's offices in Palos Hills, Illinois and Newark, New Jersey, and seized from those locations all of BIF's financial records, and other documents and property, including computers and personal effects of BIF employees.

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<sup>1</sup> Section 597.309 deals with "Foreign Terrorist Organizations" ("FTO's"). OFAC's website reflects that FTO's have recently been renamed "Specially Designated Glob

15. According to a form FBI agents gave to BIF on December 14, 2001, the FBI conducted the above-described searches and seizures pursuant to an Attorney General Emergency Physical Search Authorization (AGEPSA), purportedly executed by “Acting Attorney General Larry D. Thompson” on December 14, 2001.<sup>2</sup>

16. On December 14, 2001, the FBI, purportedly searching for BIF property, searched the home of Enaam Arnaout (“Arnaout”), a United States citizen who is BIF’s Chief Executive Officer, in Justice, Illinois, and seized certain personal effects belonging to him and his family (including, *inter alia*, family photographs, Arnaout’s citizenship papers, and a microphone from Arnaout’s son’s Nintendo® game). This search and seizure were also purportedly conducted pursuant to the above- referenced AGEPSA.

17. Counsel for BIF were not permitted to read the AGEPSA on December 14, 2001, purportedly because it is a classified document. After repeated requests, defendants finally permitted one of BIF’s attorneys to read (but not photocopy) the AGEPSA on January 25, 2002. That review of the AGEPSA revealed that the United States was acting upon false information that Mr. Arnaout was actually a person named “Samir Abdul Motaleb.”

18. Although BIF, through its attorneys, has requested the opportunity to view and/or obtain copies of the seized items (and has extended to the FBI an offer to provide it with any information that may be necessary or useful to understand the documents and the details of BIF’s activities), the FBI has refused to let BIF have access to or copies of any of the seized items (including even BIF’s Cook County property tax bill).

19. On information and belief, the above-described searches and seizures were purportedly done pursuant to the Foreign Intelligence Surveillance Act (“FISA”), 50 U.S.C.

§§ 1801-1863.

20. The FISA authorizes physical searches only for foreign intelligence purposes, and only where there is, *inter alia*, probable cause to believe that (A) “the target of the search is a foreign

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<sup>2</sup> On information and belief, Thompson’s actual title is “Deputy Attorney General.”

power or an agent of a foreign power,” (B) “the premises or property to be searched contains foreign intelligence information,” and (C) “the premises or property to be searched is owned, used, possessed by, or is in transit to or from an agent of a foreign power.” 50 U.S.C. § 1824(a)(4).

21. None of the statements in clauses A, B, and C above is true of BIF, Mr. Arnaout, BIF’s premises or property, or Mr. Arnaout’s home or property. On information and belief, defendants lacked probable cause to believe that any of those statements were true, and thus failed to meet the statutory requirements for a physical search pursuant to the FISA.

22. On December 14, 2001, the Office of Foreign Assets Control (OFAC) blocked all funds, accounts, and business records of BIF. OFAC at that time notified BIF and others that such property accordingly could not be “transferred, withdrawn, exported, paid, or otherwise dealt in without prior authorization” from OFAC, and publicized this action through the media and on the first page of OFAC’s website. OFAC purportedly blocked BIF’s property pending an investigation of BIF by defendants pursuant to the “USA PATRIOT Act of 2001.” A copy of the OFAC blocking order served on BIF is attached as Appendix A.<sup>3</sup>

23. On December 18, 2001, BIF, through its attorneys, wrote a letter to Newcomb, the director of OFAC, requesting that OFAC issue a license or licenses, pursuant to 31 C.F.R. § 501.801, permitting blocked funds in BIF’s bank accounts to be used for outstanding and continuing obligations, to pay (1) the salaries of BIF’s employees in the United States; (2) BIF’s monthly domestic operating expenses (such as office rental, utilities, printing, and postage); and (3) legal fees and expenses to the law firm of Gessler Hughes Socol Piers Resnick & Dym, Ltd., BIF’s attorneys.

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<sup>3</sup> The second page of that order pertains to an organization other than BIF, referred to as “GRFI,” which plaintiff believes refers to the Global Relief Foundation, Inc., a different and unrelated charitable organization.

24. On December 21, 2001, BIF, through its attorneys, requested that OFAC issue a license or licenses permitting blocked funds to be used to pay (1) BIF's outstanding Cook County property tax bill and (2) outstanding invoices for recent production of literature.

25. On January 24, 2002, OFAC issued a license allowing BIF to pay legal fees and expenses to the law firm of Gessler Hughes Socol Piers Resnick & Dym, Ltd. The license permits BIF to pay legal fees and expenses only to that law firm, and only for matters related to the government's investigation of BIF and OFAC's blocking of BIF's property. The license requires BIF and its attorneys to send OFAC copies of any documents submitted to the court or other decision-making body, and all orders issued by the court or other decision-making body, and to immediately advise OFAC when it appears that the court or other decision-making body may issue an order or judgment.

26. To date, OFAC has taken no action with respect to any of the other licenses requested by BIF, and has refused to provide a deadline by which it will respond to BIF's outstanding requests for licenses. OFAC has no published rules, regulations, or standards governing the issuance of licenses. On information and belief, OFAC also has no unpublished rules, regulations, or standards governing the issuance of licenses.

27. Defendants, on at least one occasion, have also blocked a donor from transferring funds into BIF's accounts.

28. On information and belief, defendants' above-described actions have been approved at the highest levels of the United States Departments of Justice, State, and the Treasury, and were undertaken with the knowledge of and at the direction of defendants Ashcroft, Powell, and O'Neill. See Executive Order 13224 (Sept. 23, 2001), at § 1(d) (property may be blocked upon determination made by Secretary of the Treasury, Secretary of State, and Attorney General).

29. On information and belief, defendants' blocking of BIF's property was purportedly done under the authority of the International Emergency Economic Powers Act ("IEEPA"), 50 U.S.C. §§ 1701-1706, as amended by the USA PATRIOT Act of 2001.

30. The IEEPA and USA PATRIOT Act provide no basis for the blocking of BIF's property. Those statutes allow property to be blocked only if foreign persons have an interest in it. See 50 U.S.C. § 1702(a)(1)(B). BIF is an Illinois corporation controlled by United States citizens. No foreign person has an interest in BIF's property.

31. Moreover, the blocking of property pending investigation is authorized only by the USA PATRIOT Act of 2001, which President Bush signed into law on October 26, 2001.<sup>4</sup> That Act amended the IEEPA, specifically 50 U.S.C. § 1702(a)(1)(B) thereof, to authorize the President "under such regulations as he may prescribe, by means of instructions, licenses, or otherwise" to "block during the pendency of an investigation" "any property in which any foreign country or a national thereof has any interest . . . ." The powers provided to the President by 50 U.S.C. § 1702 may only be exercised when he declares a national emergency, 50 U.S.C. § 1701, and issues an Executive Order published in the Federal Register specifying the provisions under which he or other officers will act, 50 U.S.C. § 1631. The President has never, at any time following the enactment of the PATRIOT Act, issued an Executive Order delegating his authority to block during the pendency of an investigation to OFAC or other agency or officer of the United States.

32. For all of these reasons, defendants' blocking of BIF's property was an illegal and *ultra vires* act.

33. Defendants' actions described above have made it impossible for BIF to carry on its charitable, humanitarian, and religious activities of raising funds and distributing goods and services to needy persons, have strongly discouraged donors from contributing to BIF, and have severely injured BIF's reputation. Defendants' actions threaten to put BIF out of business entirely, and threaten to literally destroy the lives of many of the recipients of BIF's charity, such as the hundreds of patients in the two hospitals operated by BIF and the approximately 3,000 orphans receiving BIF support.

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<sup>4</sup> OFAC's website (<http://www.ustreas.gov/ofac/>) refers to BIF as "BPI-PA." On information and belief, that

34. BIF has no adequate remedy at law and will suffer irreparable injury if the defendants are not enjoined from engaging in the activities described herein.

#### **COUNT I**

##### **PROCEDURAL DUE PROCESS** (against all defendants)

35. Plaintiff incorporates by reference ¶¶ 1-34, *supra*, as if fully set forth herein.

36. Defendants' above-described actions have deprived BIF of property interests (including, but not limited to, the right to use, sell, and otherwise dispose of its property) without due process of law, in violation of the Fifth Amendment to the United States Constitution.

#### **COUNT II**

##### **SUBSTANTIVE DUE PROCESS** (against all defendants)

37. Plaintiff incorporates by reference ¶¶ 1-34, *supra*, as if fully set forth herein.

38. Defendants' actions, by imposing severe punishment on BIF without it being convicted of a crime by the United States or any State thereof, violate BIF's right to substantive due process under the Fifth Amendment to the United States Constitution.

#### **COUNT III**

##### **TAKING WITHOUT JUST COMPENSATION** (against all defendants)

39. Plaintiff incorporates by reference ¶¶ 1-34, *supra*, as if fully set forth herein.

40. Defendants' actions in (1) seizing property belonging to BIF and (2) blocking all funds, accounts, and business records of BIF, *i.e.*, forbidding them to be "transferred, withdrawn, exported, paid, or otherwise dealt in without prior authorization" from OFAC, have effected takings of private property for public use, without just compensation, in violation of the Takings Clause of the Fifth Amendment to the United States Constitution.

#### **COUNT IV**

##### **OTHER FIFTH AND SIXTH AMENDMENT VIOLATIONS** (against all defendants)

41. Plaintiff incorporates by reference ¶¶ 1-34, *supra*, as if fully set forth herein.

42. Defendants' seizure and blocking of BIF's funds, accounts, and business records have prevented BIF from having any access to them and further, even if access were allowed, forbid BIF to use them in any way (including spending its funds on attorneys' fees to challenge defendants' actions) without seeking and obtaining a special license from OFAC. To date, OFAC has granted only one of the five licenses sought by BIF. See *supra* ¶¶ 23-26.

43. Defendants' seizure and blocking of BIF's assets and records thus imposes severe punishment upon BIF without affording BIF its rights under the Fifth and Sixth Amendments to the United States Constitution to notice of the charges against it, the right to confront any witnesses against it, compulsory process for obtaining witnesses in its favor, trial by jury, and the right to assistance of counsel.

## **COUNT V**

### **FOURTH AMENDMENT (against all defendants)**

44. Plaintiff incorporates by reference ¶¶ 1-34, *supra*, as if fully set forth herein.

45. Defendants' physical seizure of BIF's property, and its blocking of BIF's funds, accounts, and business records, have effected seizures of BIF's property within the meaning of the Fourth Amendment to the United States Constitution.

46. On information and belief, defendants' physical seizure of BIF's property was not supported by probable cause.

47. On information and belief, (1) defendants' blocking of BIF's property was not supported by probable cause, and (2) no court has issued an order authorizing the blocking of BIF's property.

48. Defendants' actions have thus effected unreasonable seizures of BIF's property, in violation of the Fourth Amendment to the United States Constitution.

**COUNT VI**  
**FIRST AMENDMENT – SPEECH, ASSOCIATION, AND PETITION**

(against Ashcroft, O’Neill, Powell, and Newcomb)

49. Plaintiff incorporates by reference ¶¶ 1-34, *supra*, as if fully set forth herein.

50. Defendants’ blocking of BIF’s property forbids BIF from spending any money on speech, associational activities, or to petition the government for redress of grievances (including filing a lawsuit), unless it seeks and obtains prior approval from OFAC. For example, BIF cannot pay attorneys’ fees or court filing fees without obtaining a license. It is also forbidden even to purchase advertisements in the media protesting its unconstitutional mistreatment by the government.

51. Defendants’ blocking of BIF’s property thus unconstitutionally infringes BIF’s rights under the First Amendment to the United States Constitution to freedom of speech, freedom of association, and to petition the government for redress of grievances.

**COUNT VII**  
**FIRST AMENDMENT – RELIGION**

(against all defendants)

52. Plaintiff incorporates by reference ¶¶ 1-34, *supra*, as if fully set forth herein.

53. BIF, and many of its donors and employees, support and participate in BIF’s work because it fulfills their religious obligations as Muslims to engage in *zakat* (anonymous humanitarian charitable giving). *Zakat* is one of the Five Pillars (fundamental principles) of the Muslim religion.

54. Defendants’ seizure of BIF’s records and blocking of BIF’s property forbid BIF and its donors to engage in the free exercise of religion, in violation of the First Amendment to the United States Constitution.

**COUNT VIII**  
**RELIGIOUS FREEDOM RESTORATION ACT**  
(against all defendants)

55. Plaintiff incorporates by reference ¶¶ 1-34 and 53, *supra*, as if fully set forth herein.
56. Defendants' seizure of BIF's records and blocking of BIF's property substantially burden religious exercise without a compelling justification, in violation of the Religious Freedom Restoration Act, 42 U.S.C. §§ 2000bb to 2000bb-4.

**COUNT IX**  
**INTERNATIONAL EMERGENCY ECONOMIC POWERS ACT –**  
**HUMANITARIAN AID**  
(against Ashcroft, O'Neill, Powell, and Newcomb)

57. Plaintiff incorporates by reference ¶¶ 1-34, *supra*, as if fully set forth herein.
58. On information and belief, defendants' blocking of BIF's property is purportedly taken pursuant to powers granted to the President by the International Emergency Economic Powers Act ("IEEPA"), 50 U.S.C. §§ 1701-1706, as amended by the USA PATRIOT Act of 2001.
59. Defendants' blocking of BIF's property has made it impossible for BIF to fulfill its mission of providing food, clothing, medicine, and other articles intended to be used to relieve human suffering endured by orphans and the victims of wars, natural disasters, and extreme poverty.
60. Defendants' blocking of BIF's property is in violation of 50 U.S.C. § 1702(b)(2), which provides that the IEEPA (with certain exceptions not relevant here) does not permit the President "to regulate or prohibit, either directly or indirectly" "donations of articles, such as food, clothing, and medicine, intended to be used to relieve human suffering."

**PRAYER FOR RELIEF**

**WHEREFORE**, plaintiff seeks a declaration that defendants' actions violate the First, Fourth, Fifth, and Sixth Amendments to the United States Constitution, the Religious Freedom Restoration Act, and the International Emergency Economic Powers Act, a preliminary and permanent injunction directing defendants to return the seized property and remove the restrictions placed upon BIF and its property, attorneys' fees pursuant to the Equal Access to Justice Act (28 U.S.C. § 2412), costs, and such other and further relief as this Court determines to be just and equitable.

Respectfully submitted,

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One of the Attorneys for Plaintiff,  
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