



## A Comparison of Due Process Rights in Terrorist Designation Processes to the Charity and Security Network's Model

The process used by the United States government to “designate,” or list, charitable organizations as supporters of terrorism is controversial, and three federal courts have found key elements of these procedures to be constitutionally deficient.<sup>i</sup> In addition, the U.S. has not implemented due process reforms consistent with the December 2009 United Nations (UN) Resolution 1904, which it supported. The Charity and Security Network has developed model rules to protect the due process rights of U.S. charities to remedy the constitutional problems, make U.S. practice consistent with international standards and protect the assets of charities for the beneficiaries in need. These model rules can be found at [http://www.charityandsecurity.org/solutions/model\\_due\\_process\\_procedures\\_charities](http://www.charityandsecurity.org/solutions/model_due_process_procedures_charities)

The following chart compares procedures used by the Department of Treasury, Department of State, the UN under Resolution 1904 and the Charity and Security Network proposed model rules to help illustrate the deficiencies in the current system and suggest a way forward.

### **Background Information:**

Under the Antiterrorism and Effective Death Penalty Act (AEDPA), an organization is designated as a Foreign Terrorist Organization (FTO). Under the International Emergency Economic Powers Act (IEEPA), an organization is designated as a Specially Designated Terrorist<sup>ii</sup> or a Specially Designated Global Terrorist (SDGT).<sup>iii</sup> They appear on the Department of Treasury's overall sanctions list, known as Specially Designated Nationals (SDN). It is a crime for any person or organization to knowingly provide, attempt, or conspire to provide “material support or resources”<sup>iv</sup> to an organization designated under AEDPA or IEEPA. Under IEEPA there are civil and criminal penalties for engaging in financial or other transactions with nations, groups or individuals listed.

## Summary Chart:

### Due Process Rights in Terrorist Designation Processes to the Charity and Security Network's Model

<b>Due Process Issue</b>	<b>IEEPA/Treasury</b>	<b>AEDPA/State Department</b>	<b>UN Resolution 1904</b>	<b>Charity and Security Network's Model Policy</b>
<i>Pre-Designation Notice</i>	No	No	No	Yes
<i>Post-Designation Notice</i>	Limited	Limited	Yes	Yes
<i>Right to Counsel</i>	Yes for pro bono counsel and payment for limited types of cases, otherwise requires a license from Treasury	Yes but only with a license from Treasury	Not addressed	Yes and without a license from Treasury
<i>Opportunity to Know Evidence Against</i>	Limited to unclassified evidence and post-designation	Limited to unclassified evidence and post-designation	Limited to unclassified evidence and post-designation	Yes
<i>Opportunity to Confront Classified Evidence</i>	No	No	No	Yes
<i>Opportunity to Present Rebuttal Evidence</i>	Yes, but post-designation	Yes, but post-designation	Yes, but post-designation	Yes, and pre-designation
<i>Independent Review</i>	No	No. Review is limited to appeal post-designation	Yes but limited to post-designation	Yes
<i>Judicial Review &amp; Right to Appeal</i>	Yes but limited	Yes but review is limited to administrative record created by State Department	Not applicable	Yes
<i>Periodic Review of Designations</i>	None	None unless designated group seeks revocation after two years <sup>v</sup>	Every year	Every two years
<i>Deadlines</i>	No	Yes	Yes	Yes

## Detailed Comparison of Due Process Rights in Terrorist Designation Processes to the Charity and Security Network’s Model:

**Key:**

IEEPA	International Emergency Economic Powers Act
AEDPA	Anti-terrorism and Effective Death Penalty Act
USG	United States Government
OFAC	Office of Foreign Asset Control, Department of Treasury
FTO	Foreign Terrorist Organization, designated by Department of State
SDGT	Specially Designated Global Terrorist, designated by the Department of Treasury
SDN	Specially Designated National, designated by the Department of Treasury
UN	United Nations

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<b><i>Pre-Designation Notice</i></b>	<p><i>No.</i> Pre-designation notice is not required.<sup>viii</sup> An organization under investigation for prospective designation has its assets frozen by Treasury.<sup>ix</sup> The freezing of assets serves as notice of a pending investigation into whether to designate the organization. No notice of the basis for the government’s investigation is provided to the nonprofit.</p> <p>Press releases on the Treasury website have been the most detailed source of information for designated organizations.</p>	<p><i>No.</i> Pre-designation notice is not required.<sup>x</sup></p>	<p><i>No.</i> UN Sanctions Committee notifies the designated nonprofit in a “timely manner” <i>after</i> designation.<sup>xi</sup></p> <p>The UN encourages the UN Sanctions Committee to ensure that fair and clear procedures exist for placing individuals and entities on the UN’s Consolidated List and for removing them as well as for granting humanitarian exemptions.<sup>xii</sup></p>	<p><i>Yes.</i> When the government determines an enforcement action may be necessary, it notifies the nonprofit in writing delivered in person to the chief executive officer or chair of the governing board. The notice contains allegations with sufficient specificity to inform the nonprofit of the issues and concerns to allow for a meaningful response.</p> <p>CSN proposes establishing an initial investigation and compliance phase and a formal review phase prior to a designation. During these preliminary phases, the nonprofit is permitted to review the government’s</p>

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				<p>evidence, offer rebuttal evidence, and given an opportunity to take steps to cure any problems cited by the government. All writings and correspondence become part of the administrative record.</p> <p>The initial investigation and compliance phase includes a status conference wherein the parties discuss resolution of the issue in a way that is proportionate to the problem and protects the legitimate activities of the nonprofit. In the case of no agreement on resolution, the government should adopt the least disruptive remedy such as a cease and desist order or appointment of a conservator.</p>
<b>Post-Designation Notice</b>	<p><i>Limited.</i> The designated person or nonprofit is notified through publication in the Federal Register upon designation.<sup>xiii</sup> Assets of the designated nonprofit or person are frozen on the same day notice is provided via publication in the Federal Register.<sup>xiv</sup> Because the Federal Register is difficult to access by the general public, such notice is inadequate. Effective notice of designation or investigation thus</p>	<p><i>Limited.</i> The designated person or nonprofit is notified through publication in the Federal Register upon designation.<sup>xv</sup> Assets of the designated nonprofit or person are frozen on the same day notice is provided via publication in the Federal Register.<sup>xvi</sup> Because the Federal Register is difficult to access by the general</p>	<p><i>Yes.</i> UN Sanctions Committee notifies the designated nonprofit in a “timely manner” after its designation. The notice includes a narrative summary of reasons for designation, a description of the effects of designations, and procedures for de-designation requests.<sup>xvii</sup></p>	<p><i>Yes.</i> Although the nonprofit receives notice in the pre-designation stage, if matters are not resolved and the USG decides to pursue designation, it must petition in federal court.</p>

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	occurs when the nonprofit discovers its assets have been frozen.	public, such notice is inadequate. Effective notice of designation or investigation thus occurs when the nonprofit discovers its assets have been frozen.	The UN Secretariat publishes on the Sanctions Committee's website all relevant publicly releasable information, including the narrative summary of reasons for designation, "immediately after a name is added to the Consolidated List." <sup>xviii</sup>	
<b>Is there a right to counsel?</b>	<p><i>Yes for pro bono and paid counsel for limited categories, otherwise requires a license from Treasury.</i></p> <p>Under rules announced in December 2010 U.S. lawyers can provide legal representation to a listed group without charge in "any legal, arbitration or administrative proceeding brought before an U.S. federal, state or local court or agency" without getting a license from Treasury. To pay costs of legal representation, no license is necessary if the representation relates to 6 specific types of cases and payment is from the client's sources outside the U.S. or from a legal defense fund at a U.S. financial institution that is subject to reporting requirements.<sup>xix</sup></p>	<p><i>Yes but and only with a license from Treasury.</i> For purposes of challenging the terrorist designation, nonprofits have no right to counsel.<sup>xx</sup> A designated nonprofit or person seeking to use frozen funds to retain an attorney must obtain a license<sup>xxi</sup> from Treasury authorizing use of such funds.</p> <p>To avoid prosecution for providing material support to terrorists, anyone seeking to represent a designated nonprofit or person must apply for and obtain a license<sup>xxii</sup> from Treasury, whether paid a fee or not.</p>	<i>Not addressed.</i> While there is no specific provision on this issue, the designated nonprofit presumably has a right to counsel paid by its own funds. Depending on a specific country's laws, the entity's funds may or may not be available for payment of legal expenses.	<p><i>Yes and without a license from Treasury.</i> The nonprofit is not required to obtain a license from the government in order to retain counsel or communicate with persons in possession of information necessary to formulate a response to the USG's specific allegations.</p> <p>A nonprofit is permitted to raise additional funds to pay for its legal expenses related to investigatory or designation proceedings. Contributions towards payment of legal expenses would be permitted.</p>

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<p><b><i>Opportunity to Know Evidence Against</i></b></p>	<p><i>Limited to unclassified evidence and post-designation. A nonprofit is not provided the opportunity to confront evidence before it is designated. Only if the nonprofit appeals its designation in federal district court can it review unclassified evidence put forth by the government.</i></p> <p>Because the evidence is often classified,<sup>xxiii</sup> this belated, post-designation opportunity to review limited portions of the evidence is of little value.<sup>xxiv</sup></p>	<p><i>Limited to unclassified evidence and post-designation.<sup>xxv</sup> A nonprofit is not provided the opportunity to confront evidence before its designation. Only if the nonprofit appeals its designation in the U.S. Court of Appeals for the District of Columbia, can it review unclassified evidence put forth by the government.<sup>xxvi</sup> Because the evidence is often classified, this belated, post-designation opportunity to review limited portions of the evidence is of little value.<sup>xxvii</sup></i></p>	<p><i>Limited to unclassified evidence and post-designation.<sup>xxviii</sup> The narrative summary is available on the Sanctions Committee's website.<sup>xxix</sup> The designated nonprofit can request the "statement of case" submitted by the Member State in support of designation except parts a Member State identifies as confidential.<sup>xxx</sup></i></p>	<p><i>Yes and pre-designation. CSN proposes establishing an initial investigation and compliance phase and a formal review phase prior to a designation. During these preliminary phases, the nonprofit has the opportunity to review the evidence and submit a written response within 30 days of receipt. The nonprofit's response becomes part of the administrative record. If evidence is provided by anonymous witnesses, the government must corroborate any evidence provided by the anonymous witness before it may base adverse action on such evidence. Proceedings in the investigative and compliance phase are confidential unless waived by the nonprofit.</i></p> <p><i>During the subsequent formal review phase, the nonprofit should be given the opportunity to review the government's evidence no more than 60 days after receiving notice. The nonprofit has 60 days to review the evidence, submit a written response including</i></p>

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				exhibits and affidavits. All information submitted by the nonprofit becomes part of the administrative record.
<b>Opportunity to Confront Classified Evidence</b>	<i>No.</i> The nonprofit does not have access to classified evidence at the administrative stage. In appeal to the courts the government submits classified evidence to the court <i>ex parte</i> and <i>in camera</i> <sup>xxxvi</sup> wherein the designated nonprofit is unable to confront the classified evidence proffered against it. Classified information is undiscoverable as long as it remains classified. <sup>xxxii</sup> As a result, determinations may be made on hearsay and coerced or uncorroborated testimony.	<i>No.</i> Classified information is subject to disclosure, except that on appeal such information may be disclosed to a court <i>ex parte</i> and <i>in camera</i> for purposes of the limited judicial review available. <sup>xxxiii</sup> Classified information is undiscoverable as long as it remains classified. <sup>xxxiv</sup> As a result, determinations may be made on hearsay and coerced or uncorroborated testimony.	<i>No.</i> The designated nonprofit does not have an opportunity to review classified evidence. It is unclear whether the narrative summary of reasons for designation incorporates information gleaned from classified evidence.	<i>Yes.</i> The government provides the nonprofit at least 10 days prior notice of its intention to use classified evidence. A nonprofit should have the choice of either: 1) retaining counsel with security clearance to review the classified information or 2) requesting a summary of the classified information sufficiently detailed to allow the nonprofit to put forth a meaningful response. Documents created by the nonprofit or obtained from the nonprofit's records should be accessible to it and not considered classified.  If the nonprofit chooses to hire counsel with security clearance, counsel should be permitted to share specified documents with the nonprofit upon a particularized showing to the government of the need to share documents. The government is encouraged to declassify such information or provide a substitute means of

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				<p>informing the nonprofit of the evidence.</p> <p>If the government declines to disclose or summarize classified information, pursuant to the process described above, the nonprofit may petition the court within 45 days for an order under the Classified Information Procedures Act allowing it access to the information. The government may submit to the court an affidavit of the head of the government agency certifying that disclosure of classified information would cause identifiable damage to the national security of the United States and explaining the basis for the classification of such information. If requested, the court may examine the affidavit in camera and ex parte.</p>
<b><i>Opportunity to Present Rebuttal Evidence</i></b>	<p><i>Yes but post-designation.</i> Designated nonprofits may seek an administrative reconsideration of an SDT or SDGT designation from Treasury wherein they submit arguments or evidence that the nonprofit believes establishes that insufficient basis</p>	<p><i>Yes but post-designation.</i> Designated entities are not permitted to cross examine witnesses or present witnesses of their own. The decision to designate is based on an administrative record created and</p>	<p><i>Yes. Designated entity may submit evidence in petition to be delisted.</i> After designation, the entity may petition the Ombudsman to be delisted from the UN list. The entity may submit</p>	<p><i>Yes.</i> Both during the initial investigation and compliance phase and the formal review, the nonprofit is permitted to submit a written response to the government's allegations and present information to rebut claims in the</p>

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	<p>exists for the designation.<sup>xxxv</sup> The information becomes part of the administrative record for appeal. Designated entities are not permitted to cross examine witnesses or present witnesses of their own in an administrative reconsideration process or during judicial review. The decision to designate is based on an administrative record created and controlled by the Secretary of Treasury.<sup>xxxvi</sup></p>	<p>controlled by the Secretary of State.<sup>xxxvii</sup> The limited judicial review available is based solely on the administrative record.<sup>xxxviii</sup> Designated entities and persons are not permitted to submit evidence to challenge their FTO designation.<sup>xxxix</sup></p> <p>After designation, the entity may petition to revoke the designation wherein it can provides evidence in that petition “sufficiently different from the circumstances that were the basis for the designation such that a revocation with respect to the organization is warranted.”<sup>xxxi</sup></p>	<p>fact-based assessments of the information relevant to the delisting request. This information becomes part of the record in deciding whether to grant the request to delist.<sup>xlii</sup></p>	<p>government’s notice. It may notify the government of steps the nonprofit has taken to correct problems cited in the notice. The written response and rebuttal evidence are included in the administrative record.</p>
<b>Independent Review</b>	<p><i>No.</i> Administrative review of a request for reconsideration is conducted by OFAC, the same governmental agency making the designation.<sup>xliii</sup> Treasury issued regulations that “permits designated entities to seek administrative reconsideration by the US government after they have been designated and had their property frozen.”<sup>xliiii</sup> OFAC</p>	<p><i>No. Review is limited to right to appeal post-designation.</i> A designated nonprofit or person has thirty days from the date of publication in the Federal Register to challenge its designation only in the U.S. Court of Appeals for the District of Columbia.<sup>xliiii</sup></p>	<p><i>Yes.</i> Ombudsman appointed by the UN Secretary-General who is of high moral character, impartial, and possesses high qualifications and experience of the relevant legal, human rights, counter-terrorism and sanctions regimes.</p>	<p><i>Yes.</i> Before designation, an independent Ombudsman conducts an in-person review of the government’s notice, the nonprofit’s response, and the evidence put forth by both parties and makes recommendations. The in-person review is recorded and becomes part of the administrative record.</p>

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	<p>is under no obligation to consider a request for reconsideration in a timely manner.<sup>xliv</sup></p> <p>OFAC has full discretion on whether to accept the nonprofit's offering of rebuttal evidence and whether to accept a request for a meeting</p> <p>Some courts have held that designated organizations must exhaust administrative remedies, including seeking administrative reconsideration from OFAC, before proceeding to court.<sup>xlv</sup></p>		<p>Upon designation, designated nonprofit is informed of right to submit a request to the Ombudsman to be removed from the Consolidated List of designated terrorists. ¶¶ 19,21 Upon such a request, the Ombudsman facilitates a 2 month period of information gathering followed by another 2 month period of engagement between the State, the UN Sanctions Committee, and UN Monitoring Team. During this engagement period, the nonprofit may provide additional information in support of delisting as well as seek additional information from the relevant States. Upon completion of the engagement period, the Ombudsman produces a Comprehensive Report to the Sanctions Committee, which has two months to make a decision on the request for delisting.</p> <p>If a nonprofit's request to</p>	

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			<p>be delisted is rejected, the UN Ombudsman will describe to the nonprofit the process and publicly releasable factual information gathered in support of the Committee's decision for continued designation. Annex II ¶ 13(b). The Ombudsman will forward the Sanctions Committee's updated narrative summary of reasons for continued designation. ¶ 13(c)</p>	
<p><b>Judicial Review &amp; Right to Appeal</b></p>	<p><i>Yes but limited.</i> If OFAC denies the nonprofit's request for administrative reconsideration of the designation, or upon designation, the nonprofit may appeal the designation in a federal district court.<sup>xlvi</sup> The limited judicial review available is based solely on the administrative record created by Treasury.<sup>xlvi</sup></p> <p>Designated entities and persons are not permitted to submit evidence to challenge their designation during judicial review.<sup>xlvi</sup></p>	<p><i>Yes but limited.</i> Within 30 days of its designation, the designated nonprofit may appeal the designation only to the U.S. Court of Appeals for the District of Columbia. Judicial review is limited to determining whether an organization is foreign and whether an organization has engaged in terrorist activities.<sup>1</sup> A court can invalidate a designation only if it finds it to be 1) arbitrary, capricious, an abuse of discretion; 2) contrary to constitutional power, right, privilege, or immunity; 3) in excess of</p>	<p><i>Not applicable</i></p>	<p><i>Yes.</i> If the nonprofit is designated as an SDGT pursuant to IEEPA or an FTO pursuant to AEDPA, it has 120 days to appeal to the federal district courts. The standard of review is whether the government's action was supported by substantial evidence, and if so, whether the least drastic available sanctions were imposed. If the government's action fails that standard, then the case should be remanded to consider lesser sanctions or opportunities to cure.</p>

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		<p>statutory jurisdiction, authority, or limitation, or short of statutory right; or 4) lacking substantial support in the administrative records taken as a whole or in classified information submitted.<sup>li</sup> Generally, the court is highly deferential to State's designation.</p> <p>The next level of appeal is to the U.S. Supreme Court, however, it has yet to accept to review a challenge to a terrorist designation.</p> <p>A defendant in a criminal action or an alien in a removal proceeding shall not be permitted to raise any question concerning the validity of the issuance of such designation or re-designation as a defense or an objection at any trial or hearing.<sup>lii</sup></p>		
<b><i>Periodic Review of Designations</i></b>	<i>None.</i> No required periodic review of SDTs and SDGTs	<i>None.</i> The FTO designation does not lapse. An organization may seek revocation two years after the designation is made. <sup>liii</sup>	<i>Every year.</i> Annual review of all names that had not been reviewed in three or more years. There is a UN Consolidated List of all designated entities and	<i>Every two years.</i>

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			individuals.	
<b>Deadlines</b>	<i>No.</i> Treasury has no deadlines for when it must conclude an investigation pending designation, respond to requests for reconsideration, or complete a reconsideration process.	<i>Yes.</i> An entity has 30 days to file an appeal of its designation before the U.S. Court of Appeal for the District of Columbia.	<i>Yes.</i> A decision on a request for delisting shall take no more than six months unless extraordinary circumstances warrant an extension of time. No matter should be left pending before the Sanctions Committee for longer than six months unless extraordinary circumstances warrant such based on a case-by-case consideration. <sup>liv</sup>	<i>Yes.</i> Reasonable deadlines for all parties are built in to every phase of the process.

<sup>i</sup> See, e.g., *Kindhearts for Charitable Humanitarian Development v. Geithner*, 647 F.Supp. 2d 857 (N.D. Ohio 2009) (finding that block of corporate assets violated nonprofit's Fourth Amendment rights and statutory rights under the Administrative Procedures Act); *Al-Haramain v. U.S. Dept. of Treasury*, 585 F.Supp. 2d 1233 (D. Or. 2008) (finding a violation of AHIF-Oregon's due process rights because Treasury failed to provide notice for eight months between the time it froze AHIF's assets "pending investigation" in February 2004, and the designation of the organization as an SDGT in September 2004); *People's Mojahedin Org. of Iran v. U.S.*, 613 F.3d 220, 225 (D.C. Cir. 2010) (holding that where State relies on unclassified information that is sufficient to designate a group as a FTO, it must provide it in advance of the proposed action and give the group an opportunity to rebut the proposed FTO listing).

<sup>ii</sup> Pursuant to his authority under IEEPA, President Clinton issued Executive Order 12947 in 1995 to extend IEEPA's reach beyond nation-states to an organization designated as "specially designated terrorist," making it illegal for anyone to knowingly engage in any transactions of any kind with designated groups.

<sup>iii</sup> Pursuant to his authority under IEEPA, President Bush issued Executive Order 13224 in 2001 to name twenty-seven "specially designated global terrorists" and authorizing the Secretary of Treasury and the Secretary of State to designate more organizations or individuals as SDGTs.

<sup>iv</sup> 18 USC 2339A-C.

<sup>v</sup> Prior to 2004, the Secretary of State was statutorily required under AEDPA to redesignate individuals and entities every two years, and a failure to do so caused the designation to lapse. The Intelligence Reform and Terrorism Protection Act of 2004 § 7119 amended AEDPA to eliminate this requirement for a periodic review every two years. See 8 U.S.C. § 1189(a)(4)(B)(ii). However, if five years pass without a petition for revocation from the FTO, the Secretary of State conducts her own review to determine if revocation is appropriate. 8 U.S.C. § 1189(a)(4)(C)(i).

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- <sup>vi</sup> 50 USC 1701, *et seq*; Title 31 CFR Part 501, 595, and 597 are the implementing regulations of the sanctions program imposed by the U.S. Department of Treasury upon a designated nonprofit or individual. The regulations apply to entities designated pursuant to IEEPA or AEDPA.
- <sup>vii</sup> United Nations Resolution 1904 (Dec. 17, 2009), available at <http://www.un.org/News/Press/docs/2009/sc9825.doc.htm> (last visited November 3, 2010)
- <sup>viii</sup> Global Relief Found., Inc. v. O’Neill, 207 F.Supp 2d 779, 803 (N.D. Ill. 2002).
- <sup>ix</sup> 50 USC 1702(a)(1)(B) (permitting sanctions pending an investigation). Regulations 31 C.F.R. § 594.101-901 cover Specially Designated Global Terrorist Blockings (SDGT) blockings. Regulations 31 C.F.R. §§ 595.101-901 cover Specially Designated Terrorist (SDT) blockings. Regulations 31 C.F.R. §§ 597.101-901 cover Foreign Terrorist Organizations blockings.
- <sup>x</sup> See People’s Mojaheddin Org. of Iran v. United States, 613 F.3d 220, n4 (D.C. Cir.. 2010) (“we do not require advance notification of the Secretary’s decision upon an adequate showing that ‘earlier notification would impinge upon the security and other foreign policy goals of the United States’”) (quoting Nat’l Council of Resistance of Iran v. Dep’t of State., 251 F.3d 192, 208 (D.C. Cir. 2001)); See also 50 U.S.C. App. 5(B), 22 U.S.C. 2370(A), 22 U.S.C. 6001.
- <sup>xi</sup> United Nations Security Council Resolution 1904 ¶ 18 (2009).
- <sup>xii</sup> *Id.*
- <sup>xiii</sup> See Note to 31 CFR 594.201(a) (“The names of persons whose property or interests in property are blocked pursuant to § 594.201(a) are published on OFAC’s website, announced in the Federal Register and incorporated on an ongoing basis with the identifier [SDGT] in appendix A to 31 CFR chapter V.”)
- <sup>xiv</sup> 50 USC § 1702(a)(1)(B).
- <sup>xv</sup> 8 U.S.C. 1189(a)(2)(A)(ii).
- <sup>xvi</sup> *Id.*
- <sup>xvii</sup> United Nations Security Council Resolution 1904 ¶ 19 (2009).
- <sup>xviii</sup> *Id.* at ¶ 18.
- <sup>xix</sup> See 31 CFR 594.506 for list of case types.
- <sup>xx</sup> 31 CFR 597.201 (freezing assets upon designation by Secretary of State pursuant to AEDPA)
- <sup>xxi</sup> 31 CFR 597.505 (requiring a specific license for payment of legal services for a foreign terrorist organizations).
- <sup>xxii</sup> 31 CFR 597.505 (requiring a specific license for payment of legal services for a foreign terrorist organizations); 31 CFR 597.201 (prohibiting transactions involving blocked assets or funds of foreign terrorist organizations or agents); 31 CFR 597.505 (permitting application for license to obtain legal services); 31 CFR 595.506 (authorizing OFAC to issue licenses to a designated nonprofit to access frozen funds for paying attorneys’ fees); see also Global Relief Found. v. O’Neill, 207 F. Supp.2d 779, 786 (N.D. Ill. 2002).
- <sup>xxiii</sup> Holy Land Foundation for Relief and Development v. Ashcroft, 219 F.Supp.2d 57, 65 n.6 (D.D.C. 2002) (describing the government’s designation of HLF as an SDT and SDGT based on classified and unclassified information).
- <sup>xxiv</sup> Al-Aqeel v. Paulson, 568 F. Supp. 2d 64, 72 (D.D.C. 2008) (rejecting the argument that ex parte and in camera judicial review of classified portions of the record entitled the defendant to the non-classified portions of the record, including privileged and sensitive law enforcement materials).
- <sup>xxv</sup> But see People’s Mojahedin Org. of Iran v. Dep’t of State, 613 F.3d 220, 225 (D.C. Cir. 2010) (finding that due process requires PMOI be notified of the unclassified evidence used against it and an opportunity to respond before *re-designation*) (emphasis added).
- <sup>xxvi</sup> 8 USC 1189(a)(3).
- <sup>xxvii</sup> See People’s Mojahedin Org. of Iran v. Dep’t of State, 613 F.3d 220, 225 (D.C. Cir. 2010) (citing 8 USC 1189(a)(4)(B)(iv)(II) in acknowledging the Secretary of State’s ability to rely on classified information that “shall not be subject to disclosure for such time as it remains classified, except that such information may be disclosed to a court ex parte and in camera for purposes of judicial review”).
- <sup>xxviii</sup> United Nations Security Council Resolution 1904 ¶ 19 (2009).
- <sup>xxix</sup> United Nations Security Council Resolution 1904, Annex II ¶ 14 (2009).
- <sup>xxx</sup> United Nations Security Council Resolution 1904 ¶ 11 (2009).

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- <sup>xxx</sup> If the basis of the SDT or SDGT designation is classified information, “such information may be submitted to the reviewing court ex parte and in camera.” 50 USC 1702(c).
- <sup>xxxii</sup> 35 USC 1702(c). *See, e.g.*, *Holy Land Foundation for Relief & Dev. v. Ashcroft*, 219 F. Supp.2d 56, n.4 (D.D.C. 2002) (noting the government’s filing of a motion to submit classified information in camera and ex parte); *see also* *Global Relief Found. v. O’Neill*, 315 F.3d 748, 754 (7th Cir. 2002) (noting the defendant’s submission of ex parte, in camera documents as permissible and appropriate);
- <sup>xxxiii</sup> 8 USC 1189(a)(3)(B).
- <sup>xxxiv</sup> *See* *People’s Mojahedin Org. of Iran v. U.S.*, 613 F.3d 220, 225 (D.C. Cir. 2010) (citing 8 USC 1189(a)(4)(B)(iv)(II) in acknowledging the Secretary of State’s ability to rely on classified information that “shall not be subject to disclosure for such time as it remains classified, except that such information may be disclosed to a court ex parte and in camera for purposes of judicial review”).
- <sup>xxxv</sup> 31 CFR 501.807 (a designated entity “may submit arguments or evidence [to Treasury] that the person believes establishes that insufficient basis exists for the designation”).
- <sup>xxxvi</sup> 5 USC 706; *Holy Land Found.*, 219 F.Supp. at 67 (“the Court does not undertake its own fact-finding” but “review[s] the administrative record assembled by the agency to determine whether its decision was supported by a rational basis”).
- <sup>xxxvii</sup> 8 U.S.C. 1189(a)(3)(A).
- <sup>xxxviii</sup> 8 U.S.C 1189(b)(1)-(2).
- <sup>xxxix</sup> *Id.*
- <sup>xl</sup> 8 USC § 1189(a)(4)(B)(iii).
- <sup>xli</sup> United Nations Resolution 1904, Annex II 3(b).
- <sup>xlii</sup> 31 CFR 807
- <sup>xliii</sup> 31 CFR 501.807.
- <sup>xliv</sup> *See* *Al-Haramain Islamic Found., Inc. v. Geithner*, 2009 WL 3756363, \*5 n.7 (D. Or. Nov. 5, 2009) (criticizing Treasury for taking three years to complete a request for reconsideration but also noting an absence of a regulatory or statutory requirement that OFAC consider a request for reconsideration in a timely manner)
- <sup>xlv</sup> *Al-Aqeel v. Paulson*, 568 F. Supp. 2d 64, 71 (D.D.C. 2008) (noting the ability to submit arguments and evidence in support of the claim that insufficient basis exists for the designation, the ability to request a hearing from OFAC, and the ability to receive a written determination of a request for reconsideration. afforded the defendant both notice and a meaningful opportunity to be heard)
- <sup>xlvi</sup> 8 U.S.C. 1189(b)(1)-(2)
- <sup>xlvii</sup> *See, e.g.*, *Holy Land Found. for Relief and Dev. v. Ashcroft*, 219 F.Supp.2d 57 (D.D.C. 2002) (involving a challenge to a SDT and SDGT designation).
- <sup>xlviii</sup> 5 USC 706; *Holy Land Found. for Relief and Dev. v. Ashcroft*, 219 F.Supp.2d 57, 67 (D.D.C. 2002) (“the Court does not undertake its own fact-finding” but “review[s] the administrative record assembled by the agency to determine whether its decision was supported by a rational basis”).
- <sup>xliv</sup> *Id.*
- <sup>l</sup> 8 U.S.C. 1182(b)(3)(A)
- <sup>li</sup> 8 U.S.C. 1182(b)(3)(B)-(D)
- <sup>lii</sup> 8 USC 1189(a)(8).
- <sup>liii</sup> Intelligence Reform and Terrorist Prevention Act of 2004 § 7119 (amending 8 U.S.C. 1189(a)(4)(B) by removing the two year limitation on an FTO designation).
- <sup>liv</sup> United Nations Security Council Resolution 1904, Annex II ¶ 41 (2009).