Terrorism Designations Primer: Process, Authorities, and Recourse

Executive Summary

Since the mid-1990s, the Executive Branch has sought to target foreign terrorist organizations, and those individuals and organizations supporting them, in order to degrade their funding and support. Organizations and individuals designated through these processes can face criminal and civil penalties and find their assets frozen or seized.

While these terrorist designations have typically been reserved for armed militant groups overseas who were engaged in acts of ideological violence against civilians, the same authorities have also been used to designate transnational criminal organizations, including the recent designation of cartels and Haitian gangs.[1] This primer provides an overview of the various terrorism designation processes, the implications of these designations, and pathways to challenge these designations.

Foreign Terrorist Organization (FTO)

Designation Process

In 1996, Congress passed the Antiterrorism and Effective Death Penalty Act (AEDPA) which established the process for designating organizations as foreign terrorist organizations or FTOs.[2] AEDPA added Section 219, "Designation of Foreign Terrorist Organizations," to the Immigration and Nationality Act.[3] Section 219 requires the Secretary of State to find that the entity to be designated is: (1) a foreign entity that (2) engages in terrorist activity or terrorism or retains the capability and intent to engage in terrorist activity or terrorism; and (3) that the terrorist activity or terrorism of the organization threatens the security of U.S. nationals or U.S. national security. [4]

---

[1] On January 20, 2025, President Trump issued Executive Order 14157, "Designating Cartels and Other Organizations as Foreign Terrorist Organizations and Specially Designated Global Terrorists." On February 20, 2025, the State Department designated eight cartels as foreign terrorist organizations and specially designated global terrorists (SDGTs) (seven of the eights were already designated as SDGTs). On May 5, 2025, the State Department designated two Haitian gangs as FTOs and SDGTs.

[2] Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214 (1996) (codified as amended in scattered sections in Title 28 of the U.S. Code).

[3] 8 U.S.C. § 1189.

[4] Terrorist activity is defined in 8 U.S.C. § 1182(a)(3)(B)(iii) as taking specific actions (e.g., hijacking a vessel or aircraft, assassination, or using a biological agent or dangerous item) with the intent to endanger the safety of one or more persons or to cause substantial damage to property. Terrorism is defined in 22 U.S.C. § 2656f(d)(2) as premeditated, politically motivated violence perpetrated against noncombatant targets by subnational groups or clandestine agents.

As a part of the designation process, the State Department prepares an administrative record that may include classified and unclassified findings demonstrating that the designation criteria have been met.[5] After an interagency review of the record, Congress is notified of the intent to designate and given seven days to review the decision.[6] Once Congress is notified, Treasury may block the organization's assets in the United States.[7] If Congress does not enact legislation to block the designation during the seven day review, the designation is published in the Federal Register, and such publication may be the designated party's only notification of the designation.[8] The State Department maintains a list of organizations that have been designated, as well as those that have been delisted.[9] The Secretary of State is tasked with reviewing the FTO list every five years to determine if revocation is appropriate (e.g., when an organization has disbanded).[10]

Implications of Designation

An FTO designation carries severe consequences.

- Criminal exposure: Knowingly providing material support or resources to an FTO is a crime that carries a maximum sentence of 20 years in prison, or a life sentence if the support results in the death of an individual.[11] This statute has a broad jurisdictional reach. The offending "material support" can be prosecuted even when the conduct at issue takes place entirely outside of U.S. territory or is committed by a non-U.S. person or entity without any use of the U.S. financial system.

- Civil litigation exposure: AEDPA and subsequent amendments create a civil cause of action for U.S. nationals who are victims of international terrorism.[12] They can bring lawsuits against FTOs and those who aid or abet or conspire with FTOs to commit the act of terrorism.

---

[5] 8 U.S.C. § 1189(a)(3)(A) and (B).
[6] 8 U.S.C. § 1189 (a)(2)(i) and (a)(5).
[7] 8 U.S.C. § 1189 (a)(2)(C).
[8] *See* 8 U.S.C. § 1189 (a)(2)(A)(iii).
[9] U.S. Dept. of State, Foreign Terrorist Organizations List.
[10] 8 U.S.C. § 1189 (a)(4)(C)(i).
[11] 18 U.S.C. § 2339B(a)(1); *see also* 18 U.S.C. § 2339A(b)(1) ("Material support or resources" is defined as "any property, tangible or intangible, or service, including currency or monetary instruments or financial securities, financial services, lodging, training, expert advice or assistance, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel (1 or more individuals who may be or include oneself), and transportation, except medicine or religious materials.")
[12] 18 U.S.C. § 2333.

- Blocked property: Financial institutions in possession of funds of an FTO or its agent must retain the funds and notify OFAC.[13] Assets may be frozen before the organization is notified that it has been designated.

- Immigration implications: Members of FTOs may not be admitted to the U.S. and may be removable.[14]

- No licensing regime: While OFAC may issue humanitarian and other licenses for transactions with some sanctioned individuals and groups, no comparable licensing scheme exists in the FTO context. In addition, historically DOJ has not provided formal interpretative guidance or FAQs on the scope and application of the material support statute, as OFAC does for other designations.

Avenues to Challenge

Designated entities can seek both judicial and administrative review of their designations.

Judicial Review

Organizations designated as FTOs can seek judicial review of their status in the D.C. Circuit within 30 days after publication in the Federal Register of a designation.

The statutory procedures for judicial review provide that the Court shall hold unlawful and set aside a designation if it is found to be:

> (a) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (b) contrary to constitutional right, power, privilege, or immunity; (c) in excess of statutory jurisdiction, authority, or limitation, or short of statutory right; (d) lacking substantial support in the administrative record taken as a whole or in classified information submitted to the court, [as the statute contemplates that the government can provide ex parte classified information to the court to supplement the administrative record]; or (e) not in accord with the procedures required by law.[15]

The D.C. Circuit has never set aside an FTO designation. Two designated parties have challenged their status in court, although these actions alone did not result in delisting. The Mujahedin-e Khalq Organization (MEK), also called the People's Mojahedin Organization of Iran (PMOI), and the Liberation Tigers of Tamil Eelam (LTTE) were among the first groups designated under Section 219 in

[13] 8 U.S.C. § 1189(a)(2)(C).
[14] *See* 8 U.S.C. § 1182(a)(3)(B) and 8 U.S.C. § 1227(a)(4)(B).
[15] 8 U.S.C. § 1189(c)(3).

1997. Shortly after their designations, the groups petitioned for judicial review.[16] In a consolidated case, the D.C. Circuit held that the designation statute did not deprive the groups of due process; and while the court could review the finding that an organization was (1) foreign and (2) engaged in terrorist activities as required under the statute, it concluded that as presented in that case, a court could not review the Secretary's further finding that the groups (3) threatened national security, as such a determination was committed to the Executive Branch and nonjusticiable.

In the late 2000s, MEK again petitioned the State Department to remove its designation, but the petition was denied.[17] MEK then challenged its status in U.S. courts, arguing that the record lacked support for its designation and that the Secretary did not comply with due process requirements by providing advance notice of her action and the records that formed the basis for her decision.[18] The D.C. Circuit ordered the Secretary of State to review the designation and "provide the PMOI the opportunity to review and rebut the unclassified portions of the record on which she relied."[19] The organization later sought and was granted a writ of mandamus to compel the Secretary to review the designation within a four month time period.[20] After MEK undertook additional advocacy efforts with Congress, the State Department announced the delisting of MEK in 2012, noting that the decision was made based on the organization's "public renunciation of violence, the absence of confirmed acts of terrorism by the MEK for more than a decade, and their cooperation in the peaceful closure of … their historic paramilitary base."[21] The State Department did not cite MEK's court case in announcing its decision, nor did a court order that the designation be removed, but MEK's legal challenges may have been part of the larger pressure campaign to revisit the group's status. LTTE remains designated as an FTO.

Administrative Review

Once two years have passed, an FTO may submit a petition for revocation with the Secretary of State and provide evidence that the elements required for designation were "sufficiently different" from the circumstances that were the basis for the designation.[22] In determining whether to revoke the designation, the Secretary of State may rely on classified evidence. Of the 20 FTOs delisted, all appear to have been removed because of the Secretary's determination that the organization was defunct or had reorganized in such a manner that the designation was no longer warranted.

---

[16] *People's Mojahedin Org. of Iran v. U.S. Dept of State*, 182 F.3d 17, 22-23 (D.C. Cir. 1999) ("For all we know, the designation may be improper because the Secretary's judgment that the organization threatens our national security is completely irrational, and devoid of any support. Or her finding about national security may be exactly correct. We are forbidden from saying.")
[17] *See* Congressional Research Services, *The Mojahedin-e-Khalq (MEK) or People's Mojahedin Organization of Iran (PMOI)* (Feb. 25, 2025).
[18] *People's Mojahedin Organization v. U.S. Dept. of State*, 613 F.3d 220, 227 (D.C. Cir. 2010).
[19] *People's Mojahedin Organization v. U.S. Dept. of State*, 613 F.3d 220, 231 (D.C. Cir. 2010).
[20] *In re People's Mojahedin Organization of Iran*, 680 F.3d 832, 838 (D.C. Cir. 2012).
[21] Press Release, U.S. Dept. of State, *Delisting of the Mujahdin-e Khalq* (Sept. 28, 2012).
[22] 8 U.S.C. § 1189(a)(4)(B)(iii).

Executive Order 13224 / Specially Designated Global Terrorist (SDGT)

Designation Process

The State and Treasury Departments are authorized to designate entities and individuals as SDGTs under Executive Order 13224. This Executive Order, originally issued by President Bush in September 2001 invoking authorities under the International Emergency Economic Powers Act (IEEPA), authorizes the U.S. government to block the assets of individuals that provide support, services, or assistance to, or otherwise associate with, terrorists and terrorist organizations or their agents. Specifically, this authority allows:

- The Secretary of State to designate foreign individuals or foreign entities deemed to have committed or to pose a serious risk of committing a terrorist act that threatens U.S. national security or interests;[23] and

- The Treasury Secretary to designate individuals or entities that are (a) owned or controlled by, or acting on behalf of a foreign terrorist organization, SDGT, or other person engaged in terrorism; (b) assisting in or providing support of services to an act of terrorism or to designated individuals or entities; or (c) otherwise associating with individuals or entities designated under the Executive Order.[24]

While the individuals and entities that the Secretary of State can designate must be foreign, there is no such requirement for those the Treasury Secretary designates. However, given that the requirements for Treasury designations often necessitate establishing links to already-designated SDGTs (and are very likely informed by litigation and policy considerations), the limited number of domestic charities and other entities that have been designated as SDGTs over the years have tended to have clear (alleged) ties to foreign terrorist organizations.

As one senior Department of Justice official testified to Congress in 2019 when asked about proposals to authorize the designation of domestic terrorist groups: “Designating domestic groups as domestic terrorist organizations and picking out particular groups that you say you disagree with their views and so forth is going to be highly problematic in a way that is not when you are designating al-Qaeda or

[23] Exec. Order No. 13224, 66 F.R. 49079 (2001).
[24] *Id*. The definition of “otherwise associated with,” following a court decision finding the original interpretation of the term to be unconstitutionally vague on its face and overbroad, is now defined as “[t]o own or control” or “[t]o attempt, or to conspire with one or more persons, to act for or on behalf of or to provide financial, material, or technological support, or financial or other services.”

ISIS or an international terrorist organization."[25] Examples of past designations of domestic organizations as SDGTs are included in the Judicial Review section below.

In terms of the evidentiary standard, Treasury has taken the position that to designate a party, it need only find a "reasonable basis" to determine that an entity provided "financial, material, or technological support for, or financial services to," or is "otherwise associated" with an already designated SDGT.[26] OFAC has framed this evidentiary standard as "reason to believe."[27]

Once designated, a party's assets that are in the U.S. or in the possession or control of U.S. persons are blocked. Notice of the designation is published online and in the Federal Register and the name is added to OFAC's List of Specially Designated Nationals and Blocked Persons.

Implications of Designation

- Economic sanctions: All property and interests in property of designated individuals or entities in the U.S. or in control or possession of U.S. persons are blocked, and any transactions by U.S. persons with a designated person or involving their property or interests in property are prohibited.

- Penalties for sanctions violations: Evasion of the prohibitions may lead to civil (fine) or criminal penalties (evasion must be willful; fine of up to $1,000,000 and/or imprisoned for a maximum of 20 years).

- Licenses: OFAC may authorize licenses for an otherwise-prohibited transaction involving an SDGT for certain purposes, such as license for a particular transaction, or in certain sectors, such as the general licenses for humanitarian assistance.

Avenues to Challenge

As with the FTO designation, parties may seek both administrative and judicial review.

Administrative Review

A person or organization designated as an SDGT may "submit [via email to OFAC] arguments or evidence that the person believes establishes that insufficient basis exists for the sanction or that the

[25] Confronting the Rise of Domestic Terrorism in the Homeland: Hearing Before the Comm. On Homeland Security House of Representatives, Cong. 116 Cong. 17 (2019) (Testimony of Brad Wiegmann).
[26] *See* Anti-Money Laundering: Blocking Terrorist Financing and Its Impact on Lawful Charities: Hearing before the Subcomm. on Oversight and Investigations, 111 Cong. 58 (2010) (Statement of Daniel L. Glaser).
[27] *See e.g.*, Exxon Mobil Corp. v. Mnuchin, 430 F. Supp. 3d 220 (2019).

circumstances resulting in the sanction no longer apply. The sanctioned person also may propose remedial steps on the person's part, such as corporate reorganization, resignation of persons from positions in a blocked entity, or similar steps, which the person believes would negate the basis for the sanction."[28]

Judicial Review

As with all actions taken by OFAC, SDGT designations are subject to review under the Administrative Procedure Act. Potential grounds for challenge include establishing that: (1) the designation was arbitrary and capricious; (2) the government exceeded its statutory authority granted in the relevant executive orders; and (3) the designation violates the designated party's rights under the Constitution, such as the First, Fourth, and Fifth Amendments.

Most lawsuits challenging such designations have been unsuccessful. A notable exception was a successful challenge brought by an Ohio-based nonprofit, KindHearts, which had its assets blocked by OFAC without a hearing or notice and was informed that OFAC had "provisionally determined" to designate the organization as an SDGT in 2006 based on classified evidence. KindHearts challenged the freeze and sought injunctive relief barring the designation.[29] KindHearts challenged the pending designation on the grounds that it violated its First and Fifth Amendment rights and was arbitrary and capricious under the Administrative Procedures Act. A U.S. District Court in the Northern District of Ohio granted emergency relief blocking the designation; and, in 2009, the court ruled that the government could not lawfully freeze the organization's assets without first obtaining a warrant based on probable cause.[30] KindHearts eventually reached a settlement agreement six years after it received notice of the provisional designation.[31] Even as the precedential authority of this case may be limited and the facts somewhat unique, it highlights avenues of challenge that a domestic organization facing asset seizure and designation could raise in challenging the government's actions.

KindHearts aside, part of the reason that such lawsuits challenging designations have generally been unsuccessful is that historically, U.S. policymakers have been attuned to the heightened litigation risk attendant to designating domestic individuals and organizations through this process and to the potential for courts to impose a higher legal standard and showing of due process to justify seizing a U.S. person or entity's assets – particularly when those asserts are located in the United States.

In 2002, in an effort to provide further guidance on how entities should navigate this complex environment, the Treasury Department issued anti-terrorist financing voluntary guidelines on best

[28] 31 C.F.R. § 501.807(a).
[29] *KindHearts for Charitable Humanitarian Dev., Inc. v. Geithner*, 647 F. Supp. 2d 857 (N.D. Ohio 2009)
[30] *Id.*
[31] *See* Press Release, ACLU, *Government Settles Charity's Lawsuit Over Unconstitutional Terrorism Probe* (May 1, 2012).

practices for U.S.-based charities. These guidelines were subsequently updated a few times and while there have not been any recent revisions, they can still be found on the Treasury website.[32]

While the above discussion focused on the established authority to designate under Executive Order 13224, it bears note that a President could also declare a new national emergency and issue an Executive Order under IEEPA as a basis to issue new authorities to designate with different criteria and (fewer) safeguards and strictures. Doing so may give rise to new avenues for challenge, however, and would be less grounded in the over two decades of legal precedent that have been established under Executive Order 13224.

Historical Designations of Charities and Other Non-Profits

Based on the State Department's list of current and delisted FTOs, no organization engaged primarily in bona fide humanitarian or other charitable work has been designated as an FTO. However, non-profit charities have in a limited number of instances been designated as SDGTs by the Department of Treasury, including:

- Benevolence International Foundation: Illinois-based non-profit designated as an SDGT in 2002 after its CEO was indicted for operating the organization as a racketeering enterprise and providing material support to al-Qaeda and other FTOs.
- Tamil Foundation: Maryland-based organization designated an SDGT in 2009 for allegedly raising funds for the FTO LTTE.
- Holy Land Foundation: Texas-based NGO designated as an SDGT in 2001 and convicted of providing material support to FTO Hamas in 2008.
- Union of Good: Saudia-Arabian based organization associated with Hamas and designated as an SDGT in 2008.

There has also been, and continues to be, Congressional action in this space. Last Congress, two relevant bills, H.R. 6408 and H.R. 9495, were introduced. H.R. 6408 would have established a process to strip non-profits of their tax-exempt status if designated by the Department of Treasury as "terrorist supporting organizations" and passed the U.S. House of Representatives. H.R. 6408 defined a terrorist supporting organization as "any organization which is designated by the Secretary [of Treasury] as having provided, during the 3-year period ending on the date of such designation, material support or resources" to an terrorist organization. Although providing financial or other material support to an FTO is already illegal, H.R. 6408 would have authorized the Secretary of the Treasury to designate a non-

[32] U.S. Dept. of Treasury, Anti-Terrorist Financing Guidelines: Voluntary Best Practices for U.S.-Based Charities (Sept. 29, 2006).

profit as a "terrorist supporting organization" after providing only 90 days' notice and without disclosing evidence against them.[33] H.R. 9495, the Stop-Terror Financing and Tax Penalties on American Hostages Act, would have allowed the Secretary of the Treasury to prohibit organizations from maintaining a tax-exempt status if they were found by Treasury to have provided material support or resources to a terrorist or terrorist supporting organization within a three-year period.[34] The Internal Revenue Service generally only issues a letter revoking an organization's tax-exempt status after "(a) conducting an examination of the organization; (b) issuing a letter to the organization proposing revocation; and (c) allowing the organization to exhaust the administrative appeal rights to follow the issuance of the proposed revocation letter."[35]

This Congress has continued these efforts. A provision in the House tax reconciliation bill presented for markup to the House Ways and Means Committee tracks the bills from last Congress.[36] The provision would:

- Grant the Secretary of Treasury unilateral authority to revoke tax-exempt status of non-profits determined to have provided "material support or resources" to a terrorist organization;
- Provide non-profits designated as a "terrorist supporting organization" with 90 days to "cure" the designation by either demonstrating (a) "to the satisfaction of the Secretary" that they did not provide the alleged support or resources; or (b) that they made a reasonable attempt to have that support and resources returned to their organization; and
- Allow for a non-profit to appeal to the Treasury Department for an administrative review and then to federal court if the Secretary rejects its attempt to "cure."

The provision differs from H.R.6408 and H.R. 9495 in that it would exempt humanitarian aid approved by OFAC and would require additional disclosures from the Secretary of the Treasury.

These Congressional actions further highlight the increased scrutiny of non-profit activities.

---

[33] H. R. 6408.
[34] H.R. 9495
[35] *See* Press Release, U.S. House Committee on Ways & Means, *The One, Big, Beautiful Bill Delivers on President Trump's Priorities to Restore and Expand Trump-Era Growth and Relief for Families, Workers, and Small Businesses*: *Section-by-Section* (May 12, 2025).
[36] *Markup of The One, Big Beautiful Bill*, H.Con.Res. 14 (May 13, 2025).