



UNITED STATES CODE ANNOTATED
TITLE 8. ALIENS AND NATIONALITY
CHAPTER 12--IMMIGRATION AND NATIONALITY
SUBCHAPTER II--IMMIGRATION
PART II--ADMISSION QUALIFICATIONS FOR ALIENS; TRAVEL CONTROL OF CITIZENS
AND ALIENS

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§ 1189. Designation of foreign terrorist organizations

(a) Designation

(1) In general

The Secretary is authorized to designate an organization as a foreign terrorist organization in accordance with this subsection if the Secretary finds that--

(A) the organization is a foreign organization;

(B) the organization engages in terrorist activity (as defined in section 1182(a)(3)(B) of this title or terrorism (as defined in section 2656f(d)(2) of Title 22), or retains the capability and intent to engage in terrorist activity or terrorism) [FNI]; and

(C) the terrorist activity or terrorism of the organization threatens the security of United States nationals or the national security of the United States.

(2) Procedure

(A) Notice

(i) To Congressional leaders

Seven days before making a designation under this subsection, the Secretary shall, by classified communication, notify the Speaker and Minority Leader of the House of Representatives, the President pro tempore, Majority Leader, and Minority Leader of the Senate, and the members of the relevant committees of the House of Representatives and the Senate, in writing, of the intent to designate an organization under this subsection, together with the findings made under paragraph (1) with respect to that organization, and the factual basis therefor.

(ii) Publication in Federal Register

The Secretary shall publish the designation in the Federal Register seven days after providing the notification under clause (i).

(B) Effect of designation

(i) For purposes of section 2339B of Title 18, a designation under this subsection shall take effect upon publication under subparagraph (A)(ii).

(ii) Any designation under this subsection shall cease to have effect upon an Act of Congress disapproving such designation.

(C) Freezing of assets

Upon notification under paragraph (2)(A)(i), the Secretary of the Treasury may require United States financial institutions possessing or controlling any assets of any foreign organization included in the notification to block all financial transactions involving those assets until further directive from either the Secretary of the Treasury, Act of Congress, or order of court.

(3) Record

(A) In general

In making a designation under this subsection, the Secretary shall create an administrative record.

(B) Classified information

The Secretary may consider classified information in making a designation under this subsection. Classified information 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 under subsection (b) of this section.

(4) Period of designation

(A) In general

Subject to paragraphs (5) and (6), a designation under this subsection shall be effective for all purposes for a period of 2 years beginning on the effective date of the designation under paragraph (2)(B).

(B) Redesignation

The Secretary may redesignate a foreign organization as a foreign terrorist organization for an additional 2-year period at the end of the 2-year period referred to in subparagraph (A) (but not sooner than 60 days prior to the termination of such period) upon a finding that the relevant circumstances described in paragraph (1) still exist. The Secretary also may redesignate such organization at the end of any 2-year redesignation period (but not sooner than 60 days prior to the termination of such period) for an additional 2-year period upon a finding that the relevant circumstances described in paragraph (1) still exist. Any redesignation shall be effective immediately following the end of the prior 2-year designation or redesignation period unless a different effective date is provided in such redesignation. The procedural requirements of paragraphs (2) and (3) shall apply to a redesignation under this subparagraph.

(5) Revocation by Act of Congress

The Congress, by an Act of Congress, may block or revoke a designation made under paragraph (1).

(6) Revocation based on change in circumstances

(A) In general

The Secretary may revoke a designation made under paragraph (1) or a redesignation made under paragraph (4)(B) if the Secretary finds that--

- (i) the circumstances that were the basis for the designation or redesignation have changed in such a manner as to warrant revocation; or
- (ii) the national security of the United States warrants a revocation.

(B) Procedure

The procedural requirements of paragraphs (2) and (3) shall apply to a revocation under this paragraph. Any revocation shall take effect on the date specified in the revocation or upon publication in the Federal Register if no effective date is specified.

(7) Effect of revocation

The revocation of a designation under paragraph (5) or (6), or the revocation of a redesignation under paragraph (6), shall not affect any action or proceeding based on conduct committed prior to the effective date of such revocation.

(8) Use of designation in trial or hearing

If a designation under this subsection has become effective under paragraph (2)(B), or if a redesignation under

this subsection has become effective under paragraph (4)(B), 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 redesignation as a defense or an objection at any trial or hearing.

(b) Judicial review of designation

(1) In general

Not later than 30 days after publication of the designation in the Federal Register, an organization designated as a foreign terrorist organization may seek judicial review of the designation in the United States Court of Appeals for the District of Columbia Circuit.

(2) Basis of review

Review under this subsection shall be based solely upon the administrative record, except that the Government may submit, for ex parte and in camera review, classified information used in making the designation.

(3) Scope of review

The Court shall hold unlawful and set aside a designation the court finds 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 under paragraph (2), [\[FN2\]](#) or
- (E) not in accord with the procedures required by law.

(4) Judicial review invoked

The pendency of an action for judicial review of a designation shall not affect the application of this section, unless the court issues a final order setting aside the designation.

(c) Definitions

As used in this section--

(1) the term "classified information" has the meaning given that term in section 1(a) of the Classified Information Procedures Act (18 U.S.C. App.);

(2) the term "national security" means the national defense, foreign relations, or economic interests of the United States;

(3) the term "relevant committees" means the Committees on the Judiciary, Intelligence, and Foreign Relations of the Senate and the Committees on the Judiciary, Intelligence, and International Relations of the House of Representatives; and

(4) the term "Secretary" means the Secretary of State, in consultation with the Secretary of the Treasury and the Attorney General.

CREDIT(S)

1999 Main Volume

(June 27, 1952, c. 477, Title II, ch. 2, § 219, as added Apr. 24, 1996, Pub.L. 104-132, Title III, § 302(a), 110 Stat. 1248, and amended Sept. 30, 1996, Pub.L. 104-208, Div. C, Title III, § 356, Title VI, § 671(c)(1), 110 Stat. 3009-644, 3009-722.)

2003 Electronic Update

(As amended Oct. 26, 2001, Pub.L. 107-56, Title IV, § 411(c), 115 Stat. 349.)

[FN1] So in original. The closing parenthesis probably should follow be "section 1182(a)(3)(B) of this title".

[FN2] So in original. The comma probably should be a semicolon.

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1996 Acts. [Senate Report No. 104-179](#) and [House Conference Report No. 104- 518](#), see 1996 U.S. Code Cong. and Adm. News, p. 924.

References in Text

Section 1(a) of the Classified Information Procedures Act, referred to in subsec. (c)(1), is [section 1\(a\) of Pub.L. 95-456](#), Oct. 15, 1980, 94 Stat. 2025, as amended, which is classified to Appendix 3 to Title 18, Crimes and Criminal Procedure.

Codifications

Another [section 411\(c\) of Pub.L. 107-56](#) enacted provisions set out as an Effective Date of 2001 Amendment note under [8 U.S.C.A. § 1182](#).

Amendments

2001 Amendments. Subsec. (a). [Pub.L. 107-56, § 411\(c\)](#), rewrote subsec. (a) which formerly read:

"(a) Designation

"(1) In general

"The Secretary is authorized to designate an organization as a foreign terrorist organization in accordance with this subsection if the Secretary finds that--

"(A) the organization is a foreign organization;

"(B) the organization engages in terrorist activity (as defined in [section 1182\(a\)\(3\)\(B\)](#) of this title); and

"(C) the terrorist activity of the organization threatens the security of United States nationals or the national security of the United States.

"(2) Procedure

"(A) Notice

"Seven days before making a designation under this subsection, the Secretary shall, by classified communication--

"(i) notify the Speaker and Minority Leader of the House of Representatives, the President pro tempore, Majority Leader, and Minority Leader of the Senate, and the members of the relevant committees, in writing, of the intent to designate a foreign organization under this subsection, together with the findings made under paragraph (1) with respect to that organization, and the factual basis therefor; and

"(ii) seven days after such notification, publish the designation in the Federal Register.

"(B) Effect of designation

"(i) For purposes of section 2339B of Title 18, a designation under this subsection shall take effect upon publication under subparagraph (A).

"(ii) Any designation under this subsection shall cease to have effect upon an Act of Congress disapproving such designation.

"(C) Freezing of assets

"Upon notification under paragraph (2), the Secretary of the Treasury may require United States financial institutions possessing or controlling any assets of any foreign organization included in the notification to block all financial transactions involving those assets until further directive from either the Secretary of the Treasury,

Act of Congress, or order of court.

"(3) Record

"(A) In general

"In making a designation under this subsection, the Secretary shall create an administrative record.

"(B) Classified information

"The Secretary may consider classified information in making a designation under this subsection. Classified information 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 under subsection (c) of this section.

"(4) Period of designation

"(A) In general

"Subject to paragraphs (5) and (6), a designation under this subsection shall be effective for all purposes for a period of 2 years beginning on the effective date of the designation under paragraph (2)(B).

"(B) Redesignation

"The Secretary may redesignate a foreign organization as a foreign terrorist organization for an additional 2-year period at the end of the 2-year period referred to in subparagraph (A) (but not sooner than 60 days prior to the termination of such period) upon a finding that the relevant circumstances described in paragraph (1) still exist. The procedural requirements of paragraphs (2) and (3) shall apply to a redesignation under this subparagraph.

"(5) Revocation by Act of Congress

"The Congress, by an Act of Congress, may block or revoke a designation made under paragraph (1).

"(6) Revocation based on change in circumstances

"(A) In general

"The Secretary may revoke a designation made under paragraph (1) if the Secretary finds that--

"(i) the circumstances that were the basis for the designation have changed in such a manner as to warrant revocation of the designation; or

"(ii) the national security of the United States warrants a revocation of the designation.

"(B) Procedure

"The procedural requirements of paragraphs (2) through (4) shall apply to a revocation under this paragraph.

"(7) Effect of revocation

"The revocation of a designation under paragraph (5) or (6) shall not affect any action or proceeding based on conduct committed prior to the effective date of such revocation.

"(8) Use of designation in trial or hearing

"If a designation under this subsection has become effective under paragraph (1)(B), a defendant in a criminal action shall not be permitted to raise any question concerning the validity of the issuance of such designation as a defense or an objection at any trial or hearing."

1996 Amendments. Subsec. (b)(3)(D), (E). [Pub.L. 104-208, § 356](#), added subpars. (D) and (E).

[Pub.L. 104-208, § 671\(c\)\(1\)](#), made change in nomenclature not requiring change in text.

Effective and Applicability Provisions

1996 Acts. Amendment by [section 356 of Div. C of Pub.L. 104-208](#) effective as if included in enactment of [Pub.L. 104-132, Title IV, Subtitle A, § 401](#), Apr. 24, 1996, 110 Stat. 1258, see [section 358 of Div. C of Pub.L. 104-208](#), set out as a note under [section 1182](#) of this title.

[Section 671\(c\)\(7\) of Div. C of Pub.L. 104-208](#) provided that: "The amendments made by this subsection [amending this section and section 1105a and 1252a of this title] shall take effect as if included in the enactment of subtitle A of title IV of AEPDA [probably means AEDPA, which is subtitle A of [Title I of Pub.L. 104-132](#), which was approved Apr. 24, 1996]."

Severability of Provisions

If any provision of Division C of [Pub.L. 104-208](#) or the application of such provision to any person or circumstances is held to be unconstitutional, the remainder of Division C of [Pub.L. 104-208](#) and the application of the provisions of Division C of [Pub.L. 104-208](#) to any person or circumstance not to be affected thereby, see [section 1\(e\) of Pub.L. 104-208](#), set out as a note under section 1101 of this title.

CROSS REFERENCES

"Terrorist organization" defined as in this section for purposes of providing material support or resources to designated foreign terrorist organizations, see [18 USCA § 2339B](#).

NOTES OF DECISIONS

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[1/2](#). Construction with other laws

Defendants could raise challenge to constitutionality of procedure whereby an organization was designated by the Secretary of State as "terrorist" as a defense to charge of providing material support to designated foreign terrorist organization. [U.S. v. Rahmani, C.D.Cal.2002, 209 F.Supp.2d 1045](#).

[1](#). Constitutionality

Evidence that American "members" of Irish political organizations personally rented post office boxes and utilized a bank account to transmit funds and information to the organizations did not establish that such organizations had a property interest or presence in the United States, so as to require that the Secretary of State provide them with due process before designating them as "foreign terrorist organizations." [32 County Sovereignty Committee v. Department of State, C.A.D.C.2002, 292 F.3d 797, 352 U.S.App.D.C. 93](#).

Prohibitions against providing material support or resources to foreign terrorist organization, which are contained in Antiterrorism and Effective Death Penalty Act (AEDPA), do not unconstitutionally impose guilt by association. *Humanitarian Law Project v. Reno*, C.A.9 (Cal.) 2000, 205 F.3d 1130, certiorari denied [121 S.Ct. 1226, 532 U.S. 904, 149 L.Ed.2d 136](#).

Statute empowering United States Secretary of State to designate group as "foreign terrorist organization," thereby subjecting group's bank accounts in United States to seizure and anyone who knowingly contributed financial support to group to criminal prosecution, did not deprive two designated organizations of due process, inasmuch as organizations had no presence in United States and had had no bank deposits seized as result of designation, and thus had no constitutional rights. [People's Mojahedin Organization of Iran v. U.S. Dept. of State, C.A.D.C.1999, 182 F.3d 17, 337 U.S.App.D.C. 106](#), rehearing and suggestion for rehearing in banc denied, certiorari denied [120 S.Ct. 1846, 529 U.S. 1104, 146 L.Ed.2d 788](#).

Statute establishing procedure whereby an organization is designated by the Secretary of State as a "foreign terrorist organization" violated due process, and thus was facially unconstitutional; designated organization was precluded from challenging the facts contained in the administrative record or presenting evidence to rebut the proposition that it was a terrorist organization. [U.S. v. Rahmani, C.D.Cal.2002, 209 F.Supp.2d 1045](#).

[2](#). Justiciability

On petition for judicial review of decision of United States Secretary of State to designate group as "foreign terrorist organization," Court of Appeals lacks authority to review required finding that organization's terrorist activity threatens national security, inasmuch as such determination constitutes nonjusticiable political judgment. [People's Mojahedin Organization of Iran v. U.S. Dept. of State, C.A.D.C.1999, 182 F.3d 17, 337 U.S.App.D.C. 106](#), rehearing and suggestion for rehearing in banc denied, certiorari denied [120 S.Ct. 1846, 529 U.S. 1104, 146 L.Ed.2d 788](#).

3. Judicial review

Court of Appeals had jurisdiction over petition for judicial review of order of the Department of State designating petitioners as "foreign terrorist organizations," notwithstanding petitioners' pending request for reconsideration before the Secretary of State, as request was similar to a request for a new rulemaking and did not render the designation nonfinal. [32 County Sovereignty Committee v. Department of State, C.A.D.C.2002, 292 F.3d 797, 352 U.S.App.D.C. 93.](#)

Pursuant to statute authorizing judicial review of decision of United States Secretary of State to designate group as "foreign terrorist organization," Court of Appeals had authority to review requisite findings that organization was foreign one and engaged in terrorist activities, even though it was not competent, on justiciability grounds, to review third required finding that organization's terrorist activity threatened national security. [People's Mojahedin Organization of Iran v. U.S. Dept. of State, C.A.D.C.1999, 182 F.3d 17, 337 U.S.App.D.C. 106,](#) rehearing and suggestion for rehearing in banc denied, certiorari denied [120 S.Ct. 1846, 529 U.S. 1104, 146 L.Ed.2d 788.](#)

4. Weight and sufficiency of evidence

Designation by Secretary of State of one Iranian dissident organization as alias of another such organization, for purposes of determining whether organizations constituted "foreign terrorist organization" under Anti-Terrorism and Effective Death Penalty Act (AEDPA), did not lack substantial support and was neither arbitrary, capricious, nor otherwise not in accordance with law. [Council of Resistance of Iran v. Department of State, C.A.D.C.2001, 251 F.3d 192, 178 A.L.R. Fed. 705, 346 U.S.App.D.C. 131,](#) rehearing denied.

Substantial support existed in the "administrative record" for determination by United States Secretary of State that organization purportedly founded for purpose of creating separate Tamil state in Sri Lanka was "foreign" organization, for purposes of statute allowing Secretary to designate group as "foreign terrorist organization," notwithstanding organization's claim that it was government. [People's Mojahedin Organization of Iran v. U.S. Dept. of State, C.A.D.C.1999, 182 F.3d 17, 337 U.S.App.D.C. 106,](#) rehearing and suggestion for rehearing in banc denied, certiorari denied [120 S.Ct. 1846, 529 U.S. 1104, 146 L.Ed.2d 788.](#)

5. Injunction

Trial court acted within its discretion in issuing limited preliminary injunction with respect to terms "training" and "personnel" in prohibitions against providing material support or resources to foreign terrorist organization, which are contained in Antiterrorism and Effective Death Penalty Act (AEDPA), on ground that those terms were impermissibly vague under First Amendment. [Humanitarian Law Project v. Reno, C.A.9 \(Cal.\) 2000, 205 F.3d 1130,](#) certiorari denied [121 S.Ct. 1226, 532 U.S. 904, 149 L.Ed.2d 136.](#)

8 U.S.C.A. § 1189

8 USCA § 1189

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