

THE INFINITE RECURSION OF ASSET SEIZURES

Steven Aftergood must have had an extra dose of turkey over the weekend, because it seems like Steven Aftergood week here at TNH. Today, he has a liberated CRS report on the implementation of Bush's EO 13438, which authorizes the seizure of the assets of people determined to "threaten stabilization efforts in Iraq." At least according to the Congressional Research Service, the EO allows for incredibly broad application, since it allows for the asset seizure of people who financially support people who financially support people who financially support the destabilization of Iraq—you get the idea.

The scope, objectives and precedents of the order – Executive Order 13,438, "Blocking Property of Certain Persons Who Threaten Stabilization Efforts in Iraq" – were examined in a new report (pdf) from the Congressional Research Service.

"The broad language of this executive order has been the subject of a degree of criticism as potentially reaching beyond insurgents in Iraq to third parties, such as U.S. citizens, who may unknowingly be providing support for the insurgency," the CRS report noted, citing prior reports in the Washington Post, TPM Muckraker, and elsewhere.

In fact, the potential application of the order appears to be technically unlimited since it includes a recursive clause that has no defined endpoint.

Thus, section 1(b) of the Order states that any person who provides goods or services to a person whose actions are proscribed under section 1(a) is himself subject to section 1(a). But then, anyone

who provides similar support to *that* person could likewise be swept up in the expansive terms of the order. And so on, without end. [my emphasis]

Now, if the Administration's standards for this kind of thing were rational, it might not be a problem. But its behavior in similar circumstances has proven to be anything but. Consider this story from the LAT. It describes how a businessman who had long been blacklisted as a financial backer of terrorism got magically removed from the list recently—with no explanation.

With much fanfare in August 2002, the Bush administration formally designated prominent Italy-based businessman Ahmed Idris Nasreddin as a top financier of terrorism, saying he was a key moneyman for Al Qaeda's international network.

The United Nations quickly followed suit, requiring its 190 member nations to freeze the assets of Nasreddin and his vast web of business holdings, and to prohibit any individuals or entities in those countries from having any dealings with them.

Two weeks ago, the administration quietly took Nasreddin and a dozen of his financial companies and other holdings off the official blacklist, and the United Nations immediately did the same. Neither agency publicly announced the decision or explained why they were doing so; they simply published the delisting in an updated list of enforcement actions.

Some experts on terrorism financing found the decision puzzling. "You cannot for five years refer to someone as an international terrorist financier, seize all their funds, tell the world that this is a major-league bad guy, and then

suddenly change your mind without public explanation," said lawyer Jonathan M. Winer, a former deputy assistant secretary of State for international law enforcement. He represents clients in terrorism financing cases involving sanctions.

"In order to have credibility, you have to explain to the world what has happened, and you have to justify both decisions," Winer said. "Was the initial decision a mistake? And if it wasn't, how do you justify the new decision? It screams out for a full explanation, and none has been provided."

Now, granted, the two blacklists are different things: one pertains to Iraq, the other pertains to terrorism. But if the terrorist supporter blacklist is this (seemingly) arbitrary, then what would happen if you added infinite recursion to it?