

THE FLAMING HYPOCRISY OF US TERRORIST DESIGNATION

[Note Update Below]

On the fateful September 11, 15 men from Saudi Arabia, along with four others, perpetrated the attacks on the World Trade Center in New York. Since that time, the United States has invaded Afghanistan and Iraq in response with hundreds of thousands dead in the process. Saudi Arabia was not only never considered as an enemy, its citizens were spirited out of the country while US citizens were grounded.

Also since then a list longer than you can measure of countries and/or entities have been designated as global terrorists by the United States government. One of those so designated is al-Haramain of Oregon, who happens to be the root plaintiff in the critical litigation – pretty much the sole remaining substantial hope of challenging the incredible, illegal and unconstitutional executive power grabs by the Bush/Cheney Administration now hypocritically supported and adopted by the Obama Administration.

In spite of the fact there has never been any substantive link to terrorism, much less September 11, on the part of al-Haramain Oregon, the US government has steadfastly maintained it on the designated list. Now maybe al-Harmain was, and maybe it was not, even remotely involved in terrorism in any provable way; however the one irreducible fact is the US has *never*, despite repeated challenges, anted up any convincing factual support on the record for the allegation.

In fact, while al-Haramain Oregon is defunct and no longer exists in any form, the US has stood mute and even gone so far as to allow an US

Federal Court to declare their wiretapping of al-Haramain's attorneys, nearly a decade ago, patently illegal. All the while still maintaining the long defunct and non-existent charity on the specially designated terrorist list and so cocksure and adamant about it that the government has stated they cannot allow any judgment to be entered, much less settle, the al-Harmain litigation because they could not possibly think of a designated terrorist organization receiving one red cent from the US government.

Such is the seriousness of actions that could lead an entity to be designated a terrorist by the United States government. Well, except for the Saudis of course. And now, apparently, the Pakistani Taliban. From Mike Isikoff at Newsweek
Declassified:

In light of evidence that the group known as the Pakistani Taliban was behind the attempted May 1 Times Square bombing, the Obama administration is "actively considering" designating it as a "foreign terrorist organization" in the next few weeks —a move that would allow the U.S. government to freeze any assets belonging to the group and make it a federal crime to assist the group, officials said Tuesday. But the disclosure, first made by State Department spokesman P.J. Crowley, immediately raised questions among some counterterrorism experts as to why Washington didn't act sooner. "I'm pretty surprised that it has taken the U.S. government such a long time to do this," says Hassan Abbas, a Columbia University professor and former Pakistani police officer who is considered the leading academic expert on the Pakistani Taliban. "This is certainly one of the most lethal [terrorist] groups in South Asia and I would rank it in the top five of all international terror groups."

Now, granted, there is a technical distinction between the specially designated terrorist organization list by the Treasury Department that al-Haramain is on, and the “foreign terrorist organization” list by the State Department Isikoff describes; however, the asset freezing and general tenor are effectively coterminous. So, it is pretty interesting the Obama Department of Justice clings so desperately on the designation of the defunct and no longer existent al-Haramain while fretting and vacillating so strenuously over the Pakistani Taliban.

Golly, you would almost think the US government is prone to using their prohibited terrorist designations in some kind of shell game for political expediency. Awfully convenient for an Obama Administration in need of a handy excuse to continue propping up Bush/Cheney patent illegality on the warrantless wiretaps of the terrorist surveillance program; powers they have relentlessly protected and expanded for their own use. I wonder what Judge Vaughn Walker would think of such hypocrisy?

UPDATE: As Marcy noted, there is a new decision from the Northern District of Ohio in the case of *KindHearts Charitable Humanitarian Development v. Geithner* affecting the issue of terrorist designation. Here is the full order. These lines in the intro to the court’s discussion lay out the gist:

OFAC’s authority to designate SDGTs and block the assets of entities under investigation for supporting terrorism stems from the International Emergency Economic Powers Act (IEEPA), 50 U.S.C. §§ 1701-06, and Executive Order 13224 (E.O. 13224).

On August 18, 2009, I found that in blocking KindHearts’ assets, the government violated KindHearts’ constitutional and statutory rights. *KindHearts for Charitable Humanitarian Dev., Inc. v. Geithner* (KindHearts I),

647 F. Supp. 2d 857 (N.D. Ohio 2009) (August 18 Order) [Doc. 87]. I found that, in blocking KindHearts' assets, the government: 1) violated KindHearts' Fourth Amendment rights by failing to obtain a warrant based on probable cause; 2) violated KindHearts' Fifth Amendment rights by relying on criteria for the BPI that are unconstitutionally vague as applied, and by failing to provide KindHearts with adequate notice and a meaningful opportunity to respond; and 3) acted arbitrarily and capriciously in limiting KindHearts' access to its own funds to pay counsel for its defense. *Id.* I reserved ruling on the remedies for these violations. On October 26, 2009, I temporarily restrained OFAC from proceeding with designation of KindHearts as an SDGT pending my determination of the appropriate remedies in this case. *KindHearts for Charitable Humanitarian Dev., Inc. v. Geithner (KindHearts II)*, 676 F. Supp. 2d 649 (N.D. Ohio) (October 26 Order) [Doc. 106].

A couple of points are in order. First, a still appealable decision by the District Court in Northern District Ohio (NDO) is not particularly binding precedent on the DC District and Circuit, which is where the Pakistani Taliban designation would be made. Secondly, as noted in the main post, the Pakistani Taliban designation consideration appears to be one of "Foreign Terrorist Organization" by the State Department as opposed to the SDGT designation by Treasury which was the subject of the NDO decision.

That said, KindHearts is extremely important and almost unquestionably would have factored very heavily into the consideration, and speed of consideration, of whether or not to designate the Pakistani Taliban. It does not however, explain the uneven and inconsistent designation strategy under the Bush/Cheney regime, some of

which are still being defended now (including al-Haramain). For the record, I do sure wish I had known about the KindHearts case before; it is a significant case with sound Constitutional reasoning and absolutely affects the subject of my original post.