

STEVE COHEN
9TH DISTRICT, TENNESSEE

2404 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515

TELEPHONE: (202) 225-3265
FAX: (202) 225-5663

CLIFFORD DAVIS/ODELL HORTON
FEDERAL BUILDING
167 NORTH MAIN STREET
SUITE 369
MEMPHIS, TN 38103

TELEPHONE: (901) 544-4131
FAX: (901) 544-4329

www.cohen.house.gov

Congress of the United States

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August 21, 2013

The Honorable Jacob J. Lew
Secretary of the Treasury
United States Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

Dear Secretary Lew:

Congratulations on your recent confirmation as Secretary of the Department of the Treasury. I wish you success in your term overseeing this very important Department.

I am writing to encourage you to take action on an issue that has been contentious for some time and which, if resolved, would benefit U.S. national security interests as well as protect the constitutional rights of U.S. persons and organizations. I refer to the terrorist listing and delisting process.

Over the past several years two U.S. courts have found that the process used by Treasury to list U.S. charities as supporters of terrorism is constitutionally flawed (the *Al-Haramain* and *KindHearts* cases). During this same time the U.S. supported establishment of the Office of the Ombudsperson at the United Nations, which created a new level of independent review in delisting process, as well as greater overall transparency.

These two developments indicate that a review, open to public comment, of current Treasury regulations governing listing and delisting of individuals and entities considered to be supporters of terrorism would be timely and constructive. Such a review should examine key areas the courts identified as constitutional issues in the *Al-Haramain* and *KindHearts* cases:

- Organizations must be provided with adequate notice of the reasoning for freezing their assets and a meaningful opportunity to contest the Treasury department's decision.
- Blocking assets constitutes a "seizure" under the Fourth Amendment, and the government must therefore obtain judicial authorization based upon probable cause before freezing the assets of a particular organization.

- When the government relies upon classified information to support a determination, it must take measures to mitigate the unfairness to targeted organizations. Additionally, the need to protect classified information does not preclude judicial review.
- The government's denial of an organization's request to use blocked assets to pay attorney's fees can be arbitrary and capricious.

A review of current Treasury regulations would benefit the Department by demonstrating respect for the rule of law in acknowledging the court rulings and increase the credibility and integrity of the terrorist listing process by making it more transparent and accountable.

Thank you for your attention to this matter and I look forward to hearing from you.

As always I remain,

Most sincerely,



Steve Cohen
Member of Congress