Case No. 10-35032

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

AL HARAMAIN ISLAMIC FOUNDATION, INC., *et al.*,

Plaintiffs/Appellants

v.

UNITED STATES DEPARTMENT OF THE TREASURY, *et al.*,

Defendants/Appellees

On Appeal from the United States District Court for the District of Oregon
D.C. No. 3:07-cv-01155-KI (The Honorable Garr King)

APPELLANTS' OPENING BRIEF

David D. Cole, D.C. No. 438355
Amanda Shanor, N.Y. No. 4849378
c/o Georgetown Univ. Law Center
600 New Jersey Avenue N.W.
Washington, D.C. 20001-2075
Telephone: (202) 662-9078

Lynne Bernabei, D.C. No. 938936
Alan R. Kabat, D.C. No. 464258
Bernabei & Wachtel, PLLC
1775 T Street, N.W.
Washington, D.C. 20009-7124
Telephone: (202) 745-1942

Thomas H. Nelson, OSB No. 78315
Thomas H. Nelson & Associates
P.O. Box 1211
Welches, Oregon 97067-1211
Telephone: (503) 622-3123

J. Ashlee Albies, OSB No. 05184
Creighton & Rose, P.C.
815 SW Second Avenue, Suite 500
Portland, Oregon 97204-3026
Telephone: (503) 221-1792

DATED: July 30, 2010

CORPORATE DISCLOSURE STATEMENT

Undersigned counsel for plaintiffs-appellants state that appellant Al Haramain Islamic Foundation, Inc. is an Oregon corporation, with no parent or subsidiary, and that no publicly-held company owns 10 percent or more of its stock.

Undersigned counsel for plaintiffs-appellants further state that appellant Multicultural Association of Southern Oregon is an Oregon corporation, with no parent or subsidiary, and that no publicly-held company owns 10 percent or more of its stock.

/s/ Alan R. Kabat

Alan R. Kabat

Table of Contents

Table of Authorities

CASES

STATUTES

REGULATIONS AND EXECUTIVE ORDERS

OTHER SOURCES

STATEMENT OF SUBJECT MATTER AND APPELLATE JURISDICTION

The district court had jurisdiction pursuant to 28 U.S.C. § 1331, because plaintiffs' challenge presents a federal question. The district court order appealed from denied in part and granted in part the parties' cross-motions for summary judgment, and constitutes a final order. This Court has jurisdiction pursuant to 28 U.S.C. § 1291.

The district court entered partial summary judgment on November 6, 2008, ER 0105, and entered a final judgment on November 12, 2009. ER 0005-0006. Plaintiffs timely filed a notice of appeal on January 8, 2010. ER 0001-0003. Defendants filed a cross-appeal on January 22, 2010, but subsequently dismissed the cross-appeal on April 16, 2010. ER 2371-2372.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Whether defendants' failure to provide Al Haramain Islamic Foundation, Inc. (AHIF-Oregon) with notice and a meaningful opportunity to respond in connection with the indefinite freeze of all of its assets, which the district court properly concluded was a violation of fundamental due process rights, was excusable as harmless.

2. Whether defendants' substantial reliance on undisclosed, classified

evidence, which made up approximately 80 percent of its case against AHIF-Oregon, violated due process by denying AHIF-Oregon notice or a meaningful opportunity to respond, particularly where defendants failed even to pursue alternatives that would have increased fairness without undermining security.

3. Whether defendants' indefinite seizure of the entirety of AHIF-Oregon's assets (now extending more than six years), without a court order or probable cause, violated the Fourth Amendment.

4. Whether defendants' actions violated the Administrative Procedure Act, where they failed to afford AHIF-Oregon a meaningful opportunity to contribute to the administrative record, employed "redesignation" as a *post hoc* litigation tactic, and where the administrative record did not establish that AHIF-Oregon's actions warranted designation.

5. Whether the prohibitions on providing or attempting to provide "services" to AHIF-Oregon violate the First Amendment as applied to the Multicultural Association of Southern Oregon's intended speech in support of AHIF-Oregon's challenge to its designation and redesignation.

STATEMENT OF THE CASE

A. Nature of the Case

Al Haramain Islamic Foundation, Inc. (AHIF-Oregon), a U.S. tax-exempt charitable foundation incorporated in Oregon,[1] has been shut down, with all its assets frozen, for six and one-half years, since February 2004. The Office of Foreign Assets Control (OFAC) initially froze its assets "pending investigation," and subsequently designated and "redesignated" it as a "specially designated global terrorist" pursuant to Executive Order 13,224. Yet AHIF-Oregon has never been found guilty of any criminal conduct. It has never had a trial or hearing. No warrant issued to authorize the indefinite seizure of the entirety of its assets, and no court has found probable cause to support that seizure. OFAC did not afford AHIF-Oregon notice of the charges upon which it has been designated until February 2008 – four years after its assets were frozen, and only after OFAC had made its final decision and closed the administrative record. Moreover, approximately 80 percent of the evidence upon which OFAC relied was classified and has never been disclosed to AHIF-Oregon.

AHIF-Oregon sued, claiming that OFAC's acts were statutorily

---

[1] In this brief, plaintiff Al Haramain Islamic Foundation, Inc., will be identified as AHIF-Oregon. Al Haramain Foundation in Saudi Arabia will be identified as AHIF-SA.

unauthorized and violated the First, Fourth, and Fifth Amendments and the Administrative Procedure Act. It was joined by the Multicultural Association of Southern Oregon (MCASO), a community-based organization that seeks to advocate in support of AHIF-Oregon in challenging its designation, but is deterred from doing so by the prohibitions on providing support to AHIF-Oregon.

The district court ruled, in relevant part, that OFAC's failure to provide notice of the charges until the proceeding was over violated due process, but that the error was harmless. It concluded that OFAC's substantial reliance on undisclosed classified evidence did not violate due process. It determined that the freeze of AHIF-Oregon's assets was a "seizure," but was reasonable under the "special needs" exception to the Fourth Amendment's warrant and probable cause requirements. It held that the redesignation did not violate the Administrative Procedure Act (APA). And it ruled that the ban on providing "material support" to designated entities was unconstitutionally vague, but rejected plaintiffs' other First and Fifth Amendment challenges.

Plaintiffs appeal from the district court's conclusions that the freeze and redesignation are valid under the Fourth Amendment and the APA, that OFAC's Fifth Amendment violation was harmless, and that the prohibition on MCASO's advocacy in conjunction with AHIF-Oregon does not violate the First Amendment

as applied to its intended speech.

B. Statement of Facts

1. Statutory and Regulatory Scheme

Shortly after the terrorist attacks of September 11, 2001, President Bush invoked the International Emergency Economic Powers Act (IEEPA), 50 U.S.C. § 1701 et seq., freezing the assets of twenty-seven organizations and individuals. Exec. Order No. 13,224, 66 Fed. Reg. 49079 (Sept. 23, 2001) ("E.O. 13,224" or "Executive Order"). No evidentiary support was offered for these designations.

Executive Order 13,224 also authorized the Secretary of the Treasury to add to the list of designated entities anyone the Secretary determined: "to act for or on behalf of" others on the list; "to assist in, sponsor, or provide financial, material, or technological support for, or financial or other services to" others on the list; or to be "otherwise associated with" others on the list. E.O. 13,224, § 1 (c)-(d). Those on the list are denominated "specially designated global terrorists," or SDGTs.[2] That term is nowhere defined by statute, but was unilaterally created by the executive branch. The Treasury Department has designated thousands of

---

[2] *See* 31 C.F.R. § 594.310 (defining "specially designated global terrorist" as anyone "listed in the Annex or designated pursuant to Executive Order 13224"); *see also* OFAC, "Specially Designated Nationals and Blocked Persons," *available at* http://www.ustreas.gov/offices/enforcement/ofac/sdn/t11sdn.pdf (listing designated persons and groups) (viewed July 22, 2010).

individuals and entities under this authority.

Designation immediately freezes all of the designee's property and interests in property within the United States or in the control of U.S. persons. *Id.* § 1. In addition, the Order prohibits all transactions with designated entities, including "the making or receiving of any contribution of funds, goods, or services to or for the benefit of those persons." *Id.* § 2(a); 31 C.F.R. § 594.201.

OFAC may impose all the same effects simply by opening an investigation into *whether* an organization should be designated. *See* 50 U.S.C. § 1702(a)(1)(B) (allowing blocking "during the pendency of an investigation"). Neither the statute nor the regulation sets forth any criteria or time limits for a freeze "pending investigation." OFAC need not make any evidentiary finding or seek any judicial authorization, and need not inform the frozen entity why it is being investigated. In this case, the freeze pending investigation lasted seven months. In another pending case, an entity's assets have been frozen pending investigation for more than four years. *See KindHearts for Charitable Humanitarian Dev., Inc. v. Geithner* (*KindHearts*), 647 F. Supp. 2d 857, 870 (N.D. Ohio 2009).

OFAC may rely on classified evidence for its designation, and need not disclose that evidence to the designated entity, which is not granted a hearing or the opportunity to present or confront witnesses. *Id.* at 866; 50 U.S.C. § 1702(c).

The only "notice" OFAC typically provides is a copy of the unclassified documents in its administrative record. It does not disclose the alleged factual or legal basis for the proposed designation, and thus the entity must guess as to the nature of the charges against it. Upon designation, OFAC provides the entity or individual with no statement of reasons explaining its actions. It simply announces the fact of designation, and sometimes issues a cursory press release.

2. Designation and Redesignation of AHIF-Oregon

AHIF-Oregon was incorporated in February 1999 as a non-profit corporation. It distributed Islamic publications, owned and operated a prayer house in Ashland, Oregon, and owned another prayer house in Missouri. AHIF-Oregon worked with other community groups in southern Oregon on local issues and events, including co-plaintiff MCASO.

On February 19, 2004, OFAC blocked AHIF-Oregon's assets pending an investigation into whether it should be designated as a SDGT. ER 0284. As a result, all of AHIF-Oregon's assets and property were frozen, and it was effectively closed down. *Id.* OFAC provided no statement of reasons or charges in doing so.

While the investigation was pending, OFAC made three disclosures of "unclassified information" that OFAC was relying on in considering whether to

designate AHIF-Oregon. ER 2119 (Apr. 23, 2004); ER 2133 (July 23, 2004); and ER 2148 (Aug. 20, 2004). Most of these documents did not even mention AHIF-Oregon. OFAC did not explain how the documents related to any basis for designation. AHIF-Oregon's counsel repeatedly objected that it did not have notice of the basis for OFAC's actions, and that without such notice it could not provide a meaningful response.[3] Yet OFAC refused to provide any explanation or specification of charges.

OFAC also relied on classified evidence in its decision to designate. *Id.* Again, AHIF-Oregon's attorneys objected. ER 0473-0474. But OFAC refused to provide an unclassified summary of the classified documents, or to make provision for AHIF-Oregon's attorneys to review the classified documents under a security clearance.

Based on the few documents that actually mentioned AHIF-Oregon, AHIF-

---

[3] *See, e.g.*, L. Bernabei to R. Newcomb (May 14, 2004), at ER 0475 ("AHIF is literally at a loss as to how to respond given the paucity of relevant information contained in the 'unclassified' administrative record."); L. Bernabei to R. Newcomb (May 28, 2004), at ER 0526 ("AHIF does not know what conduct it is alleged to have engaged in that could form the basis for designation as a SDGT."); L. Bernabei to A. Szubin (Jan. 4, 2008), at ER 1253 ("Now, OFAC has exacerbated these errors by producing further evidence, without any statement whatsoever as to how any of it is relevant to any legal considerations, on what basis the agency considers any of it reliable and credible, or even what the agency believes the new evidence demonstrates.").

Oregon's counsel guessed that OFAC had two principal concerns: (1) AHIF-Oregon's distribution of Islamic literature, primarily Korans, within the United States, and (2) AHIF-Oregon's transfer of some $180,000 in support of a humanitarian relief project for Chechen refugees in Russia. ER 0475-0478.[4] OFAC specifically requested that AHIF-Oregon produce one of the Korans. ER 2127.

AHIF-Oregon produced the requested Koran, *id.*, and argued that the Islamic publications were constitutionally protected speech. ER 0475-0476. It also submitted detailed documents – unrebutted by OFAC – establishing that the Chechen relief project to which it donated had been officially approved by *both* the Russian and Saudi governments, and carried out by the Saudi Joint Relief Commission, a Saudi government agency that has never been designated. ER 0476-0507; ER 0509-0522.

On September 9, 2004, OFAC announced by press release that AHIF-Oregon had been designated as a SDGT, and issued a notice to AHIF-Oregon on September 16, 2004. ER 2020-2021; ER 2157-2158. That notice did not discuss *any* of the evidence in the administrative record. It offered no statement or

[4] The record is unclear as to whether the exact amount was $150,000 or $180,000, but that fact is not material.

reasons, enumerated no charges, and merely stated that AHIF-Oregon had been designated under unspecified criteria set forth in sections 1(c)-(d) of E.O. 13,224, each of which contains multiple potential bases for designation. ER 2157-2158. On September 9, 2004, Soliman Al-Buthe, a director of AHIF-Oregon, was also designated, also without any statement of reasons, charges, or explanation. ER 2020-2021. Neither AHIF-Oregon nor Al-Buthe had ever been notified that he was even being considered for designation. To this day, OFAC has not disclosed the basis for its 2004 designations of either AHIF-Oregon or Al-Buthe, other than what was set forth in the press release.

In February 2005 AHIF-Oregon requested reconsideration, and made two submissions of additional documents and information in connection with that request. ER 0926-1130; ER 2181-2298. Al-Buthe also sought reconsideration. ER 0714-0721. OFAC never responded.[5]

On August 6, 2007, AHIF-Oregon filed this lawsuit to challenge its designation. ER 0138. On November 14, 2007, instead of defending the challenged designation, OFAC informed AHIF-Oregon and Al-Buthe that it was

[5] In 2005, the U.S. government indicted AHIF-Oregon and two of its directors, Mr. Al-Buthe, and Pete Seda (Pirouz Sedaghaty), for regulatory offenses (customs and tax issues). ER 0877-0893. Less than six months later, however, the indictment was dismissed as to AHIF-Oregon. ER 2185-2193.

considering "redesignating" them, despite the fact that there is no provision for "redesignations" under IEEPA, E.O. 13,224 or the regulations. ER 2300-2301. OFAC again refused to specify any factual allegations or charges against AHIF-Oregon. OFAC disclosed additional unclassified documents, but did not explain their relevance, and continued to rely on undisclosed classified evidence. ER 2300-2301 (Nov. 14, 2007), ER 2303 (Nov. 30, 2007), ER 2305-2328 (Dec. 28, 2007).

On February 6, 2008 – the same day that OFAC filed a motion to dismiss in district court – it notified AHIF-Oregon that the agency had decided to "redesignate" it. ER 2330-2334. In this letter, *for the first time in four years*, OFAC informed AHIF-Oregon of the grounds for its designation. It disavowed any reliance on distribution of Islamic literature as a basis for designation. Instead, it claimed that it was "redesignating" AHIF-Oregon for three reasons: (1) it was "owned or controlled" by Aqeel Al-Aqil (the former director of Al Haramain Foundation in Saudi Arabia, or AHIF-SA); (2) it was "owned or controlled" by Al-Buthe, and (3) AHIF-Oregon, "as a branch of [AHIF-SA] has acted for or on behalf of, or has assisted in, sponsored, or provided financial, material, or technological support for, or financial or other services to or in support of Al Qaida and other SDGTs." ER 2331. It also produced a 26-page,

largely redacted, internal memorandum purporting to explain the basis for its redesignation decision. ER 2026-2051. *None of these charges or explanation had previously been disclosed to AHIF-Oregon*. Yet, the district court found, "the government provides no explanation for its inability to provide earlier the kind of lengthy explanation it issued in support of its redesignation decision, or even a summary of the contents of that explanation." ER 0076.

AHIF-SA was a Muslim charity in Saudi Arabia. For the entire period that AHIF-Oregon was in existence, AHIF-SA was not a designated entity. When AHIF-Oregon's assets were first frozen pending investigation, in February 2004, and when it was first designated, in September 2004, AHIF-SA was not designated. In late 2004, AHIF-SA ceased operations. In February 2008, when AHIF-Oregon was redesignated based on its alleged relationship to AHIF-SA, AHIF-SA was still not designated.

On June 19, 2008, the day before plaintiffs' reply brief on the cross-motions for summary judgment was due, OFAC designated "Al Haramain Islamic Foundation (all offices worldwide)." ER 0049. At the time of its June 2008 designation, AHIF-SA had been defunct for more than three years. Despite asserting that AHIF-Oregon was a "branch office" of AHIF-SA, OFAC provided AHIF-Oregon with no notice of AHIF-SA's designation, disclosed no documents

from the administrative record, and provided no opportunity for AHIF-Oregon to respond.

3. Intended Activities of the Multicultural Association

The Multicultural Association of Southern Oregon (MCASO) is a nonprofit organization dedicated to promoting diversity and understanding. ER 0090; ER 0141-0142; ER 0161. Prior to the designation challenged here, it worked with AHIF-Oregon, which it considered the principal organization in the Ashland area doing outreach and education about Islam and the Muslim community. *Id.* AHIF-Oregon participated in MCASO's annual "multicultural fair," and offered educational materials to the fair's attendees. *Id.*

MCASO would like to continue to work with AHIF-Oregon, including in its annual fair. *Id.* MCASO and its members would also like to work with AHIF-Oregon in connection with challenging its designation – by speaking about the case in public, writing newspaper columns and letters, and contacting government officials. *Id.* They were afraid, however, that these activities might be construed as prohibited services, material support, or association, and thus could result in their designation. *Id.* Accordingly, they sought injunctive and declaratory relief assuring them that they may engage in these core First Amendment-protected activities without fear of designation. ER 0165.

4. **Proceedings Below**

Plaintiffs sought summary judgment, and defendants moved to dismiss and in the alternative for summary judgment. The district court issued two decisions on the motions. ER 0007; ER 0043.[6]

The court concluded that OFAC violated AHIF-Oregon's due process rights by failing to provide it with notice of the charges against it until the proceeding was concluded. The court found:

> It was not until February 2008 when OFAC redesignated AHIF-Oregon that it finally gave a comprehensive explanation for AHIF-Oregon's SDGT status. OFAC gave the notice four years after AHIF-Oregon's assets had been frozen, three years after its initial designation, six months after AHIF-Oregon filed this lawsuit, and after AHIF-Oregon's right to add to and complete the administrative record had ended. OFAC did not explain why it could not have given this notice earlier.

ER 0019.

After further briefing, however, the court concluded that OFAC's failure to provide notice was "harmless error," because nothing AHIF-Oregon could have done might have altered OFAC's decision. ER 0022-0025.

The court deemed OFAC's reliance on undisclosed classified evidence

---

[6] The opinions are reported at: *Al Haramain Islamic Found., Inc. v. U.S. Dep't of the Treasury*, Civil No. 07-1155-KI, 2009 WL 3756363 (D. Or. Nov. 5, 2009); and *Al Haramain Islamic Found., Inc. v. U.S. Dep't of the Treasury*, 585 F. Supp. 2d 1233 (D. Or. 2008).

consistent with due process, even though it conceded that "'[o]ne would be hard-pressed to design a procedure more likely to result in erroneous deprivations.'" ER 0080-0081 (quoting *American-Arab Anti-Discrimination Comm. v. Reno* (*ADC*), 70 F.3d 1045, 1069 (9th Cir. 1995) (quoting *Goss v. Lopez*, 419 U.S. 565, 580 (1975))).

The court initially found that OFAC's freeze of AHIF-Oregon's property was a "seizure" triggering Fourth Amendment requirements, ER 0086-0088, but subsequently held that the seizure was reasonable under the "special needs" exception to the Fourth Amendment. ER 0025-0036.

Despite finding that AHIF-Oregon had been denied a meaningful opportunity to respond to the charges against it, the court ruled that OFAC's actions were not arbitrary and capricious because the administrative record supported redesignation. It rejected OFAC's first asserted ground for redesignation – Al-Aqil's ownership and control of AHIF-Oregon – because Al-Aqil had resigned from the AHIF-Oregon board in March 2003, well before AHIF-Oregon's designation and redesignation. ER 0065-0066. However, the court found OFAC's other two grounds for redesignation supported by the record. It noted that Al-Buthe was designated and remained on AHIF-Oregon's board. ER 0066-0067. And though OFAC did not identify any AHIF-Oregon funds that

actually went to a SDGT or act of terrorism, the court deemed such evidence unnecessary. It reasoned that AHIF-Oregon could be designated for what AHIF-SA did, even though AHIF-SA itself had not been designated, and the record did not show that AHIF-Oregon itself engaged in or supported any prohibited activities. ER 0067-0070.

Finally, the court held that the Executive Order and regulatory provisions authorizing designation for providing "material support" was unconstitutionally vague, but upheld the remainder of the provisions against plaintiffs' First and Fifth Amendment challenges.[7] ER 0095-0100.

REVIEWABILITY AND STANDARD OF REVIEW

The district court issued a final order granting in part and denying in part the cross-motions for summary judgment. This Court reviews the grant of summary judgment *de novo*. *Bagdadi v. Nazar*, 84 F.3d 1194, 1197 (9th Cir. 1996).

---

[7] OFAC subsequently amended its regulations to define "material support." 74 Fed. Reg. 61036 (Nov. 23, 2009).

The district court initially declared OFAC's attorneys' fee policy arbitrary and capricious as applied, ER 0100-0104, but reversed itself after further briefing. ER 0036-0039. AHIF-Oregon is not pursuing that claim on this appeal, but reserves the right to seek authorization to use its frozen funds for fees in the future should current conditions change.

SUMMARY OF ARGUMENT

OFAC has frozen the entirety of AHIF-Oregon's assets for more than six and one-half years – without probable cause, a warrant, or a hearing, and without showing that a single penny of AHIF-Oregon's funds supported an act of terrorism or a "specially designated global terrorist." These actions violated the Fourth and Fifth Amendments and the APA.

The two most important facts in this case are that OFAC did not notify AHIF-Oregon of the charges against it until the process was concluded – when OFAC announced the "redesignation" in February 2008 – and that OFAC has never offered any reason for why it did not provide such notice when the process began – in February 2004, when OFAC first froze AHIF-Oregon's assets. Thus, without any asserted justification, OFAC denied AHIF-Oregon the most basic elements of due process – notice at a meaningful time and a meaningful opportunity to respond.

The district court correctly concluded that OFAC violated due process in doing so, but erroneously concluded that this error was harmless. Failing to tell AHIF-Oregon what was at issue until the process was over was a "structural error" because it pervaded and corrupted the entire process. It is akin to convicting a criminal without an indictment, or granting judgment in a civil case without a

complaint. One cannot assess the effect of the error without rampant speculation about the "alternate universe" that would have existed had AHIF-Oregon known what was at issue when the process began. *United States v. Gonzalez-Lopez*, 548 U.S. 140, 150 (2006). In any event, OFAC has not established beyond a reasonable doubt that there was nothing AHIF-Oregon could have done to affect the result had it been afforded timely notice.

OFAC also violated AHIF-Oregon's due process rights by relying extensively on undisclosed, classified evidence. As this Court has held, reliance on secret evidence is "presumptively unconstitutional." *ADC*, 70 F.3d 1045, 1070. The district court sought to distinguish *ADC* on the ground that the illegally present aliens in *ADC* "had not participated in terrorist activities," while AHIF-Oregon "is owned or controlled by a designated terrorist, and has provided support to designated terrorists as a branch of AHIF[-SA]." ER 0081. But the whole purpose of due process is to test the veracity of such allegations; one cannot deny due process to a criminal defendant on the assertion that he is guilty anyway.

Freezing AHIF-Oregon's assets for over six years without a warrant or probable cause also violates the Fourth Amendment. The district court's conclusion that this seizure was reasonable under the "special needs" doctrine is erroneous for three reasons. First, OFAC has not shown that obtaining a warrant

on probable cause would be impracticable; courts routinely issue nationwide orders, and could do so here. Second, the seizure is in no sense minimal, and the special needs exception is restricted to intrusions that are minimal in scope or imposed on persons with reduced expectations of privacy. Third, the designation scheme contains no substitute for the warrant and probable cause requirement to constrain executive discretion.

Despite concluding that OFAC failed to afford AHIF-Oregon notice and a meaningful opportunity to respond, the court prematurely determined that the "redesignation" was supported by the administrative record and did not violate the APA. But the very act of reaching a decision without affording AHIF-Oregon a meaningful opportunity to respond requires a remand – either because OFAC's decision is for that reason "arbitrary and capricious," as this Court has held in analogous circumstances, or because it is premature for the court to assess whether the record supports the result until the affected party has that opportunity, as this Court has also held. Moreover, the "redesignation," prompted by this lawsuit, was a transparent and illegitimate effort to substitute *post hoc* rationalizations for the initial designation. And in any event, the one-sided record as it now stands does not support redesignation.

Plaintiff MCASO appeals the decision of the district court upholding the

Executive Order and regulatory prohibitions on providing or attempting to provide "services" to AHIF-Oregon as applied to its intended speech in support of AHIF-Oregon's challenge to its designation. As applied here, that prohibition is a content-based prohibition of speech, and is subject to strict scrutiny. It cannot satisfy such scrutiny, because OFAC cannot demonstrate that prohibiting such speech on behalf of a domestic group whose assets are frozen is necessary to curtail funding of terrorism.

Cutting off financing of terrorist activity is a legitimate end, but the means adopted here infringe too broadly on fundamental constitutional freedoms. The Constitution requires the government to effectuate its goal in a more narrowly tailored and procedurally fair manner.

ARGUMENT

I. OFAC'S FAILURE TO PROVIDE NOTICE OF THE BASES FOR ITS DESIGNATION AND REDESIGNATION DECISIONS AND A MEANINGFUL OPPORTUNITY TO RESPOND VIOLATED DUE PROCESS

The district court correctly ruled that OFAC's process of freezing, designating and redesignating AHIF-Oregon violated its due process rights by denying it notice of the charges against it until the proceeding was concluded and OFAC had already reached its final decision. As a U.S.-based corporation, AHIF-

Oregon is entitled to due process in connection with the freezing of its assets and its designation as a SDGT. *Holy Land Found. for Relief & Dev. v. Ashcroft* (*HLF*), 333 F.3d 156, 163 (D.C. Cir. 2003); *KindHearts*, 647 F. Supp. 2d at 906.

At a minimum, due process requires notice of the government's factual and legal case, and a meaningful opportunity to respond. *Hamdi v. Rumsfeld*, 542 U.S. 507, 533, 536-37 (2004) (citizen detained for allegedly fighting in a war against this country has due process right to notice of the charges against him and a meaningful opportunity to rebut the charges); *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 546 (1985) (due process in government employment action requires "notice of the charges against him, an explanation of the employer's evidence, and an opportunity to present his side of the story"); *Smith v. O'Grady*, 312 U.S. 329, 334 (1941) ("Real notice of the true nature of the charges against [one]" is "the first and most universally recognized requirement of due process."). Notice is inadequate if the affected person lacks an explanation of the government's charges and evidence against him, so that he is unable "to present his side of the story" to rebut that evidence. *Loudermill*, 470 U.S. at 546.

As the court held in *KindHearts*, 647 F. Supp. 2d at 901, reviewing an analogous OFAC freeze and expressly relying on this Court's precedent:

> Constitutionally sufficient notice should give the party an

> understanding of the allegations against it so that it has the opportunity to make a meaningful response. The party must be able to know the conduct on which the government bases its action, so that it can explain its conduct or otherwise respond to the allegations. It must also have reasonable access to the evidence that the government is using against them. *See, e.g., Gete v. INS*, 121 F.3d 1285, 1297-98 (9th Cir. 1997).

As detailed in the Statement of Facts, *supra*, OFAC provided no notice of charges when it initially froze AHIF-Oregon's assets in February 2004. As the district court found, the select documents that OFAC subsequently disclosed "contained many documents seemingly unrelated to AHIF-Oregon, and contained no documents that could be considered the 'smoking gun.'" ER 0076. When OFAC designated AHIF-Oregon in September 2004, OFAC again failed to provide any specification of charges, statement of reasons, factual allegations, or discussion of evidence. ER 2020-2021; ER 2157-2158.

OFAC did issue a press release announcing the designation, but as the district court found, that release failed to provide notice of *any* of the charges upon which AHIF-Oregon was ultimately redesignated, and was affirmatively misleading. "The press release did not specify SDGT ownership or control of AHIF-Oregon as a reason for the designation." ER 0077. Instead, it made three accusations, none of which turned out to be a basis for redesignation: (1) that AHIF-Oregon had direct links to Osama bin Laden, an accusation the district court

found unsubstantiated, ER 0074 & ER 0018; (2) that AHIF-Oregon violated tax and money laundering laws, charges that have since been dropped, and would not warrant designation even if true; and (3) that funds donated "with the intention of supporting Chechen refugees were diverted to support mujahideen, as well as Chechen leaders affiliated with the al-Qaeda network," ER 2020, an allegation that was also not ultimately asserted as a basis for redesignation.

As the district court found, the first time AHIF-Oregon learned of the charges against it was February 6, 2008 – not coincidentally, the same day that defendants filed their motion to dismiss and/or for summary judgment. But as the district court also found, that notice came too late, as the administrative record was closed and the decision to "redesignate" made. ER 0074-0077.

Significantly, as the district court noted, OFAC has never offered any reason why it could not have provided notice of the charges when it first froze AHIF-Oregon's assets in February 2004, or at any point before it closed the record and announced its "redesignation." ER 0076.

This Court's decision in *Gete,* 121 F.3d at 1297-98, is controlling. In *Gete*, the INS seized vehicles and provided a form letter stating that vehicles had been seized, without providing legal or factual bases for the seizure. This Court held that notice that lacks the "factual and legal bases" for a seizure is constitutionally

inadequate, because it forces property owners "to guess incorrectly why their [property] has been seized, thus preventing them from responding effectively to the unspecified accusations." *Id.* OFAC did the same here.

The district court's thorough decision in *KindHearts* is also instructive. There, as here, OFAC froze a U.S.-based entity's assets pending investigation under E.O. 13,224, and disclosed a partial set of unclassified documents, but critically failed to provide notice of the factual and legal bases for its actions. Applying the due process test in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1965), the court found that (1) the private interest in not having the entirety of one's assets frozen indefinitely is substantial; (2) "the failure to provide adequate and timely notice creates a substantial risk of wrongful deprivation;" and (3) with respect to the burden of providing greater process, "OFAC has not explained . . . why it failed to provide timely notice of the basis and reasons for its blocking order, or why it took so long for it to provide the scanty information it ultimately has produced." *KindHearts*, 647 F. Supp. 2d at 904-06.

The same analysis holds here. AHIF-Oregon is shut down indefinitely; the risk of error with a one-sided process is at its zenith; and OFAC has offered no justification whatsoever for failing to provide timely notice. The district court correctly concluded that OFAC had violated AHIF-Oregon's due process rights.

II. DEFENDANTS' FAILURE TO PROVIDE NOTICE AND A MEANINGFUL OPPORTUNITY TO RESPOND WAS NOT HARMLESS BEYOND A REASONABLE DOUBT

Despite finding that AHIF-Oregon never had a meaningful opportunity to present a defense to charges of which it was unaware, the district court concluded that this error was "harmless beyond a reasonable doubt." ER 0022-0025. That decision is erroneous for two reasons. OFAC's failure to inform AHIF-Oregon of the factual and legal bases for its actions is a structural error, for which harmless-error analysis is inappropriate. And even if harmless-error doctrine was applicable, defendants have not shown beyond a reasonable doubt that there was *nothing* AHIF-Oregon could have done that might have made a difference.[8]

A. The Failure to Provide Notice of the Legal and Factual Bases for AHIF-Oregon's Designation is a Structural Defect Not Susceptible to Harmless-Error Analysis

OFAC's failure to provide constitutionally adequate notice of the charges and a meaningful opportunity to respond are structural defects that pervaded the entire proceedings. Such violations defy harmless-error analysis and require automatic reversal.

Harmless-error analysis is appropriately applied to trial-type errors, such as

---

[8] Appellate review of lower courts' application of harmless error analysis is *de novo*. *Brown v. U.S.*, 411 U.S. 223 (1973).

improper evidentiary rulings, where courts are able to assess the effect of the error. Where, however, a constitutional error fundamentally alters the structure of a proceeding, it requires reversal, and the harmless-error test is inapplicable. *Arizona v. Fulminante*, 499 U.S. 279, 309-10 (1991); *M.L. v. Fed. Way Sch. Dist.*, 394 F.3d 634, 636, 646-48 (9th Cir. 2005) (applying structural-error doctrine to administrative proceeding); *United States v. Annigoni*, 96 F.3d 1132, 1143 (9th Cir. 1996) (same, in criminal context).

Structural errors "permeate the entire conduct of the trial from beginning to end or affect the framework within which the trial proceeds.'" *M.L.*, 394 F.3d at 646 (citations omitted). They require automatic reversal because their "'consequences . . . are necessarily unquantifiable and indeterminate,'" *Gonzalez-Lopez*, 548 U.S. at 150 (quoting *Sullivan v. Louisiana*, 508 U.S. 275, 282 (1993)), and would require "a speculative inquiry into what might have occurred in an alternate universe." *Id.*

Conducting a proceeding without notice of what is at issue is structural error, akin to holding a criminal trial without an indictment, or a civil trial without a complaint. In *Stirone v. United States*, 361 U.S. 212, 215-18 (1960), the Supreme Court held that failure to provide adequate notice of what was at issue in a criminal trial violated the Fifth Amendment right to be tried on an indictment. In

Cole v. Arkansas, 333 U.S. 196, 201 (1948), the Court held that failure to provide notice violates the Sixth Amendment right to be informed of the nature and cause of the charges. In both cases, the Supreme Court reversed the convictions, noting that the errors fundamentally compromised the fairness of the proceedings. *Accord Sheppard v. Rees*, 909 F.2d 1234, 1237 (9th Cir. 1989); *see also Gautt v. Lewis*, 489 F.3d 993, 1014-18 (9th Cir. 2007) (reserving the question of whether failure to provide notice is structural error).

Harmless-error analysis is also inapplicable where, as here, an agency fails to provide notice regarding what is at issue in an administrative proceeding. *NLRB v. H.P. Townsend Mfg. Co.*, 101 F.3d 292, 295 (2d Cir. 1996). *Townsend* held that if a proceeding conducted without adequate notice were "subject to factual findings concerning what a putative party knew about charges against it, when it knew about them . . . , what opportunity it had to defend, and about the endless other matters that would have to be answered under harmless error analysis, chaos would reign." *Id.* at 295. "Sooner or later," the court concluded, "we would have to address an argument that a legal proceeding may be properly started by a note thrown over a transom stating 'You're sued and you know why.'" *Id.* This Court should likewise "decline to begin a descent down what appears to be a steep and very slippery slope." *Id.*; *see also Stone v. F.D.I.C.*, 179 F.3d 1368,

1376-77 (Fed. Cir. 1999) (violation of government employee's rights to "meaningful notice . . . and a meaningful opportunity to respond" was structural error); *Kelly v. Dep't of Agric.*, 225 Fed. Appx. 880, 882 (Fed. Cir. 2007) ("*ex parte* communications rising to the level of a procedural due process violation cannot be excused as harmless error"); *Sullivan v. Dep't of Navy*, 720 F.2d 1266, 1274 (Fed. Cir. 1983) (same).

Applying harmless-error analysis here would require a "speculative inquiry into what might have occurred in an alternate universe." *Gonzalez-Lopez*, 548 U.S. at 150. Had OFAC informed AHIF-Oregon of what was at issue in February 2004, when its assets were frozen, it could have taken corrective measures with respect to both Al-Buthe and AHIF-SA, neither of which were designated at the time; it could have tried to obtain records from AHIF-SA to support its defense and refute OFAC's allegations; and it could have demonstrated that none of its or Al-Buthe's actions warranted designation under the charges asserted. But assessing what might have happened in that eventuality would indeed require imagining an "alternate universe," the very inquiry the structural-error doctrine is designed to avoid.

The district court deemed the structural-error doctrine inapplicable because it reasoned that AHIF-Oregon was given "some idea of the reasons for the

government's blocking order" by the unclassified documents it disclosed. ER 0020. But as the district court itself previously found, many of these documents did not pertain to AHIF-Oregon, and AHIF-Oregon "was not told which provisions of the executive order were applicable, and was not given an explanation of why the documents were relevant." ER 0073. The court also noted that OFAC issued a press release announcing the 2004 designation, ER 0018-0019, but as the court itself previously found, that release did not make any mention of the charges that OFAC ultimately relied upon for redesignation. ER 0075-0077. The district court also noted that the documents alerted AHIF-Oregon that "providing funds to Chechnya might be of concern to the agency," ER 0021, but in fact, the funding to Chechnya was *not* ultimately an asserted basis for AHIF-Oregon's redesignation.

The fact that AHIF-Oregon was able to respond to issues that were *not* a basis for OFAC's action hardly renders the proceeding any less fundamentally flawed. It is like saying that a conviction for rape without an indictment is not a structural error if the defendant was indicted for tax fraud and was able to respond to the tax fraud charge. OFAC's failure to provide AHIF-Oregon with notice of the legal and factual bases of the charges against it and a meaningful opportunity to respond are structural errors that require reversal.

B. Defendants' Failure to Provide Notice and a Meaningful Opportunity for AHIF to Defend Itself Was Not Harmless Beyond a Reasonable Doubt

Even were this Court to conclude that harmless-error analysis is applicable, the district court erred in concluding that the error was harmless beyond a reasonable doubt. *Tenn. Secondary Sch. Athletic Ass'n v. Brentwood Acad.*, 551 U.S. 291, 303 (2007) (error must be shown "harmless beyond a reasonable doubt"). The purpose of the harmless-error doctrine is to avoid "setting aside convictions for small errors or defects that have little, if any, likelihood of having changed the result of the trial." *Chapman v. California*, 386 U.S. 18, 22 (1967). The failure to tell AHIF-Oregon the charges against it until the process was over is not that type of error.

i. The Burden of Establishing Harmless Error Is Especially Heavy Here

To establish that their due process violations were harmless beyond a reasonable doubt, defendants would have to show that, if they had provided notice in February 2004, when they froze AHIF-Oregon's assets and began the designation process, there would have been nothing AHIF-Oregon could have done that might have affected OFAC's decision. If there is even a reasonable doubt on that score, the error is not harmless.

Moreover, "[i]n the context of agency review," an error may be deemed harmless only "'when a mistake of the administrative body is one that *clearly* had *no bearing* on the procedure used or the substance of decision reached.'" *Gifford Pinchot Task Force v. U.S. Fish & Wildlife Serv.*, 378 F.3d 1059, 1071 (9th Cir. 2004) (quoting *Buschmann v. Schweiker,* 676 F.2d 352, 358 (9th Cir. 1982)) (emphasis added in original). OFAC's failure to afford notice plainly had a "bearing on the procedure," and therefore cannot be dismissed as harmless.

Indeed, to find harmless error beyond a reasonable doubt here, one would have to conclude that OFAC's case was unanswerable – without the benefit of seeing what AHIF-Oregon might have said as an answer. The danger of reaching such a conclusion was perhaps best captured by a distinguished British appellate judge, Lord Justice Stephen Sedley, in a case involving the use of classified evidence. Dissenting from his colleague's conclusion that the government's evidence was unanswerable, and therefore that it did not matter that the affected party had no opportunity to respond, Lord Justice Sedley wrote:

> [I]t is in my respectful view seductively easy to conclude that there can be no answer to a case of which you have only heard one side. There can be few practising lawyers who have not had the experience of resuming their seat in a state of hubristic satisfaction, having called a respectable witness to give apparently cast-iron evidence, only to see it reduced to wreckage by ten minutes of well-informed cross-examination or convincingly explained away by the other side's

> testimony. Some have appeared in cases in which everybody was sure of the defendant's guilt, only for fresh evidence to emerge which makes it clear that they were wrong. As Mark Twain said, the difference between reality and fiction is that fiction has to be credible . . . [Y]ou cannot be sure of anything until all the evidence has been heard, and that even then you may be wrong.[9]

Here, where defendants deprived AHIF-Oregon of a meaningful opportunity to present its evidence, the court should be exceedingly reluctant to conclude that its error was harmless beyond a reasonable doubt.

ii. Had It Known of the Charges Against It, AHIF-Oregon Could Have Taken Many Steps to Respond That May Have Affected the Result

The district court concluded that nothing AHIF-Oregon could have done could have altered the result. In fact, there is plenty that AHIF-Oregon could – and would – have done had it been told that these were OFAC's concerns when its assets were frozen and the process began.

a. Al-Buthe

Had it been notified of OFAC's concern regarding Al-Buthe in February 2004, AHIF-Oregon could have asked him to resign. At that point, Al-Buthe had

---

[9] *Secretary of State for the Home Dep't v. AF and others*, [2009] UKHL 28 (Opinion of Lord Phillips at ¶ 36, quoting Lord Justice Sedley), *available at* http://www.publications.parliament.uk/pa/ld200809/ldjudgmt/jd090610/af.pdf. The Law Lords, in the decision cited, reversed the court of appeals' decision and upheld Lord Justice Sedley's view.

not been designated, so his resignation would have precluded OFAC from designating AHIF-Oregon subsequently based on his "ownership or control," just as the district court found with respect to Al-Aqil. ER 0065-0066. Both Al-Buthe and Thomas Nelson, another board member, said that AHIF-Oregon and Al-Buthe would have severed ties had AHIF-Oregon been notified in a timely fashion of this ground. *See* ER 2343 (Nelson Decl., at ¶ 5); ER 2348 (Al-Buthe Decl., at ¶ 11).

In addition, AHIF-Oregon could have challenged the validity of Al-Buthe's designation.[10] AHIF-Oregon would have shown that Al-Buthe has had no involvement in supporting any SDGT or act of terrorism, and therefore was impermissibly designated. While Al-Buthe volunteered for AHIF-SA, he resigned from that position in 2002. ER 0050. AHIF-SA was not a designated entity at *any* time during Al-Buthe's involvement with it, and OFAC has not shown that his role involved any support of an act of terrorism or a SDGT. But because OFAC never told AHIF-Oregon that Al-Buthe's status was an issue for its own designation, it offered no defense of Al-Buthe.

---

[10] While AHIF-Oregon was on notice that Al-Buthe was designated in September 2004, OFAC did not inform AHIF-Oregon that Al-Buthe's status was relevant to *its* designation at that time, nor when it notified AHIF-Oregon of a potential redesignation. Nor did OFAC provide a statement of reasons for Al-Buthe's designation. For all AHIF-Oregon knew, Al-Buthe's designation was predicated on the same facts as AHIF-Oregon's, so that its defense of its own potential redesignation would apply equally to Al-Buthe.

Moreover, OFAC's failure to inform AHIF-Oregon that Al-Buthe's status was at issue until 2008 irreparably undermined AHIF-Oregon's ability to present a defense, both with respect to Al-Buthe and AHIF-SA. AHIF-SA shut its doors in late 2004, and has been defunct ever since, so that its records are now inaccessible; accordingly, AHIF-Oregon cannot obtain evidence that might have proved critical to its response. ER 2343-2344 (Nelson Decl. at ¶¶ 6-7); ER 2348-2349 (Al-Buthe Decl. at ¶¶ 12-13). Absent a showing that nothing in AHIF-SA's records could have altered OFAC's conclusions regarding Al-Buthe and AHIF-SA, the error cannot be deemed harmless.

The district court deemed it dispositive that Al-Buthe did not resign after learning that his ownership or control was a factor in AHIF-Oregon's redesignation. ER 0024-0025. But AHIF-Oregon did not learn that until February 2008, and it would have been futile for Al-Buthe to resign, as the administrative record was closed and AHIF-Oregon's designation was already the subject of this legal challenge, which must be decided on the administrative record.

b. AHIF-SA

Had AHIF-Oregon known that OFAC might designate or redesignate it on the basis of its relationship with AHIF-SA, rather than the particulars of the Chechen refugee donation, it could – and would – have shown that *none* of its

activity in connection with AHIF-SA supported *any* act of terrorism or designated entity; that its connections to AHIF-SA were minimal; that it played no part in virtually any of AHIF-SA's conduct; and that it had reasonably relied on OFAC's own decision *not* to designate AHIF-SA at all relevant periods, leaving AHIF-Oregon to assume that dealings with AHIF-SA were not prohibited.[11] ER 2343-2344 (Nelson Decl. at ¶¶ 6-7); ER 2346-2348 (Al-Buthe Decl. at ¶¶ 3-7, 9-10). In addition, just as with Al-Buthe, the fact that OFAC only notified AHIF-Oregon that its relationship to AHIF-SA was an issue in 2008, more than three years after AHIF-SA closed down, radically undermined AHIF-Oregon's ability to defend itself with records from AHIF-SA. Unless OFAC could show beyond a reasonable doubt that none of this would have mattered, the error was not harmless.

Finally, the district court's harmless-error rationale rests on an erroneous understanding of the legal criteria for designation. The court deemed it sufficient for OFAC to show that AHIF-Oregon provided support to AHIF-SA, an undesignated organization, because AHIF-SA in turn allegedly supported SDGTs

---

[11] Throughout the time that AHIF-Oregon was frozen, then designated, and later redesignated, OFAC left AHIF-SA itself and the majority of the other Al Haramain entities undesignated. ER 0174; ER 0321; ER 0324; ER 0451. It was not until June 19, 2008, *after* OFAC had "redesignated" AHIF-Oregon, that it actually designated AHIF-SA itself, a transparent attempt at *post hoc* justification, as AHIF-SA had already been closed down and inoperative for more than three years by that time.

– regardless of whether AHIF-Oregon was aware of that fact, much less ever intended to support a SDGT. ER 0069-0070; ER 0025. But E.O. 13,224 does not authorize designation based on the provision of material support or any other relationship to a *non-designated* entity, and AHIF-SA was not designated during the entire relevant time period. Had AHIF-Oregon used AHIF-SA as an intermediary to funnel money or support to SDGTs or acts of terrorism, such conduct would render it subject to designation. But OFAC did not show that *AHIF-Oregon* funded any SDGT or act of terrorism.

The district court reasoned that "money is fungible," and that therefore any support to AHIF-SA was sufficient to support redesignation. ER 0069-0070; ER 0025. The Executive Order criteria for designation are broad, but they are not that broad. On that theory, a food vendor could be designated for delivering food to AHIF-SA's headquarters, even though AHIF-SA was not a designated entity, if, unbeknownst to the vendor, AHIF-SA independently supported a SDGT. The court's harmless-error analysis therefore rested on an erroneously expansive view of the law. Applying the law properly, there is at least a reasonable doubt that AHIF-Oregon could have changed the result by demonstrating that all of its interactions with AHIF-SA were legitimate, and that it supported no SDGTs.

III. DEFENDANTS' RELIANCE ON CLASSIFIED EVIDENCE DEPRIVED AHIF-OREGON OF NOTICE OF THE CHARGES AND EVIDENCE AGAINST IT, AND VIOLATED DUE PROCESS

OFAC also violated due process by relying in significant part on classified evidence in reaching its redesignation decision, without making any provision to ensure that AHIF-Oregon had a meaningful opportunity to respond to that evidence. The memorandum written by OFAC to justify AHIF-Oregon's redesignation makes clear that the decision was based almost entirely on classified evidence. ER 2026-2051. Approximately 22 of the 26 pages are partially or completely redacted. *Id.* All of the pages concerning Mr. Al-Aqil are redacted, as are four of the five pages concerning Mr. Al-Buthe. *Id.* Of thirteen pages devoted to AHIF-SA and its "branch offices," more than eleven are redacted. *Id.* And three out of the four pages concerning AHIF-Oregon itself are redacted. *Id.* Thus, the vast majority of OFAC's evidence has never been disclosed to AHIF-Oregon. Moreover, the district court expressly relied on the classified evidence in ruling against AHIF-Oregon. *See, e.g.*, ER 0067.

A. Reliance on Secret Evidence Is Presumptively Unconstitutional

This Court has recognized that deprivations of property or liberty on the basis of secret evidence are "presumptively unconstitutional." *ADC*, 70 F.3d at

1070. This is because "'[f]airness can rarely be obtained by secret, one-sided determination of facts decisive of rights.'" *Goss v. Lopez*, 419 U.S. 565, 580 (1975) (quoting *Joint Anti-Fascist Refugee Comm. v. McGrath*, 341 U.S. 123, 170 (1951) (Frankfurter, J., concurring)). As the Supreme Court has explained:

> Certain principles have remained relatively immutable in our jurisprudence. One of these is that where governmental action seriously injures an individual, and the reasonableness of the action depends on fact findings, the evidence used to prove the Government's case must be disclosed to the individual so that he has an opportunity to show that it is untrue.

Greene v. McElroy, 360 U.S. 474, 496 (1959). Accordingly, "the Due Process Clause forbids an agency to use evidence in a way that forecloses an opportunity to offer a contrary presentation." *Bowman Transp. v. Arkansas-Best Freight Sys., Inc.*, 419 U.S. 281, 288 n.4 (1974).

In *ADC*, this Court held that the use of secret evidence to deny an immigration benefit to foreign nationals allegedly tied to a terrorist organization violated due process. The Court held that the use of classified evidence was "inherently unfair" and created an "enormous risk of error." 70 F.3d at 1070. As the Court said, "[o]nly the most extraordinary circumstances could support [such a] one-sided process." *Id.*; *see also Rafeedie v. INS*, 880 F.2d 506, 516 (D.C. Cir. 1989) (due process violated by use of classified evidence to deny admission to a

returning resident alien accused of terrorist ties, because when secret evidence is used, "[i]t is difficult to imagine how even someone innocent of all wrongdoing could meet such a burden").

ADC controls here. That case involved aliens who were concededly illegally present in the United States, and who sought an immigration benefit – amnesty. This case involves an entity lawfully present in the United States that has never been adjudicated to have violated any laws. And instead of merely denying a benefit, as in *ADC*, OFAC has effectively closed AHIF-Oregon down, freezing all of its property and criminalizing all transactions with it. Accordingly, *ADC* compels the conclusion that due process was violated here.[12]

The district court concluded that AHIF-Oregon was not entitled to the same constitutional process as in *ADC* because the illegally present foreign nationals in that case "had not participated in terrorist activities," while AHIF-Oregon "is owned or controlled by a designated terrorist, and has provided support to designated terrorists as a branch of AHIF[-SA]." ER 0081. This puts the cart

---

[12] The district court cited decisions from the D.C. Circuit upholding reliance on classified evidence to designate, *see, e.g., HLF*, 333 F.3d at 164, but the D.C. Circuit did not even apply the *Mathews v. Eldridge* balancing test required for procedural due process claims, as this Court did in *ADC*. Nor did it seek to distinguish its own earlier decision in *Rafeedie*. In any event, Ninth Circuit law governs here.

before the horse. The purpose of due process is to provide a fair process for assessing *whether* AHIF-Oregon is properly subject to designation for the reasons asserted. In fact, the aliens in *ADC* were alleged to have associated with a foreign terrorist group. *ADC*, 70 F.3d at 1053-54. Just as one cannot justify the denial of due process in a criminal trial on the ground that the accused is guilty, one cannot assert premature conclusions about the outcome of a proceeding as a justification for denying fair process.

B. OFAC Failed to Pursue Alternatives That Would Have Provided More Notice and Process Without Jeopardizing Security

OFAC refused to pursue available alternatives that would have made the process fairer *without undermining national security.* It made no effort to produce an unclassified summary of the classified evidence, as is done in the immigration and criminal contexts. *See* 18 U.S.C. App. 3 (Classified Information Procedures Act, Pub. L. 96-456); 8 C.F.R. § 1240.11(c)(3)(iv) (unclassified summary of evidence in immigration proceeding), § 1240.33(c)(4) (same), § 1240.49(c)(4)(iv) (same). And OFAC made no provision for AHIF-Oregon's counsel to review the classified evidence pursuant to a security clearance – even though it made such provision for its own counsel. As with its four-year delayed notice, OFAC has offered no justification whatsoever for refusing to provide an unclassified

summary or the same security clearances for AHIF-Oregon's counsel as it deemed fit for its own counsel.[13]

The court in *KindHearts* concluded that both an unclassified summary and disclosures pursuant to security clearances would be necessary to ensure that an entity facing designation by OFAC on the basis of classified evidence is afforded a meaningful opportunity to defend itself. *KindHearts for Charitable Humanitarian Dev., Inc. v. Geithner* (*KindHearts II*), No. 3:08-cv-2400, 2010 WL 1840841, at *16-*17 (N.D. Ohio May 10, 2010). The same conclusion is compelled by due process here. There can be no excuse for failing to pursue avenues that provide greater notice and fairness *without compromising national security*. Where, as here, the vast majority of the evidence relied upon is classified, and the government has not even attempted to pursue available alternatives that would increase notice and fairness without undermining its interest in confidentiality, due process is violated.

---

[13] The district court asserted that OFAC's press release, issued when it designated AHIF-Oregon in September 2004, somehow served as a kind of summary of classified evidence without saying so. ER 0081. But OFAC never identified the press release as such to AHIF-Oregon. Nor did OFAC or the district court compare the release to the classified evidence to assess its accuracy or adequacy. In any event, the district court itself found that the press release failed to disclose the bases for AHIF-Oregon's designation, and was affirmatively misleading. ER 0074. As such, it cannot have been an adequate summary of the classified evidence that assertedly supported designation.

IV. THE FREEZING OF AHIF-OREGON'S ASSETS VIOLATED THE FOURTH AMENDMENT

AHIF-Oregon's assets have been frozen for more than six years, without a warrant and without a finding of probable cause that it committed any crime. The district court correctly determined that such an indefinite freeze of the entirety of a corporation's property is a "seizure," and therefore must satisfy the Fourth Amendment.

A seizure occurs when "there is some meaningful interference with an individual's possessory interest in that property." *Soldal v. Cook County*, 506 U.S. 56, 61 (1992) (quoting *United States v. Jacobsen*, 466 U.S. 109, 113 (1984)). If detaining luggage for ninety minutes is a seizure requiring probable cause, *United States v. Place*, 462 U.S. 696 (1983), then freezing AHIF-Oregon's property for more than six years is as well. *See KindHearts*, 647 F. Supp. 2d at 871-72.

The district court erred, however, in concluding that seizing AHIF-Oregon's assets indefinitely was "reasonable" without either a warrant or probable cause. The court relied on the "special needs" exception. But that exception does not validate the seizure here for three reasons: (1) the warrant and probable cause requirements are not impracticable; (2) the intrusion on private interests is not minimal; and (3) neither IEEPA nor E.O. 13,224 contains a substitute for the

warrant and probable cause requirements. *See KindHearts*, 647 F. Supp. 2d at 879-82 (holding that OFAC's freeze authority under IEEPA and E.O. 13,224 does not satisfy the requirements of the "special needs" exception for these reasons).

A. The Warrant and Probable Cause Requirements Are Not Impracticable

As a threshold matter, the special-needs doctrine applies only where the government shows that special needs above and beyond criminal law enforcement "make the warrant and probable-cause requirement impracticable." *Griffin v. Wisconsin*, 483 U.S. 868, 873 (1987) (quoting *New Jersey v. T.L.O.*, 469 U.S. 325, 351 (1985) (Blackmun, J., concurring)); *United States v. Heckenkamp*, 482 F.3d 1142, 1147 (9th Cir. 2007) (citations omitted).

As the court in *KindHearts* held, "OFAC has shown no cause to believe or conclude that requiring it to develop probable cause and submit such cause to judicial evaluation would have impaired its enforcement efforts." 647 F. Supp. 2d at 881. Indeed, the government must do precisely that when pursuing the closely analogous remedy of civil forfeiture. 18 U.S.C. § 981(a)(1)(G).

The district court here deemed a warrant impracticable because it believed the government could not meet the "specificity requirements in an application for a warrant," and it would be "difficult to track down assets belonging to the

designated individual and apply for a warrant in each jurisdiction." ER 0032-0033. But there is no reason that Congress could not authorize a court to issue a nationwide order, as courts may do with respect to "roving wiretaps." *See, e.g.*, *United States v. Ramirez*, 112 F.3d 849, 852 (7th Cir. 1997) (Title III permits court to issue a warrant for wiretap of a phone anywhere in the United States, based on identification of user, not phone number or location of tap).

Just as such warrants satisfy the particularity requirement by identifying the individual targeted, *United States v. Petti*, 973 F.2d 1441, 1444-45 (9th Cir. 1992), a warrant identifying a designated entity and mandating a freeze of its assets could satisfy particularity requirements. *See also United States v. Karo*, 468 U.S. 705, 716-18 (1984) (rejecting argument that a warrant would be impracticable for a beeper in a mobile device because it would be impossible to predict the spaces invaded by the device in advance, and finding that it would be enough to specify where the beeper would be placed and the purposes and duration of its monitoring). In short, there is no impediment to obtaining a warrant to authorize the freezes that OFAC now carries out unilaterally.

The district court also reasoned that OFAC relies on holders of a designated entity's property, such as banks, to identify the assets and impose the freeze, and that a warrant could not accomplish that. ER 0033. But courts have inherent

authority to issue nationwide injunctions. *See*, *e.g.*, *United States v. AMC Entm't Inc.*, 549 F.3d 760, 770 (9th Cir. 2008); *SEC v. Homa*, 514 F.3d 661, 673-74 (7th Cir. 2008); *Waffenschmidt v. MacKay*, 763 F.2d 711, 716 (5th Cir. 1985). The freezing of assets is a subset of this inherent authority. *See SEC v. Int'l Swiss Inv. Corp.*, 895 F.2d 1272, 1276 (9th Cir. 1990). A court with jurisdiction over AHIF-Oregon could order, for example, that all those holding its assets freeze them, just as OFAC now unilaterally does.

Nor is the probable-cause requirement impracticable. The IEEPA scheme is not one where "the concept of individualized suspicion has little role to play." *Illinois v. Lidster*, 540 U.S. 419, 424 (2004). The district court found that OFAC acted on "reasonable suspicion." ER 0035. As "reasonable suspicion" is apparently practicable, OFAC has made no showing why "probable cause" is not. The Supreme Court has held that seizing luggage even for just ninety minutes requires probable cause, not reasonable suspicion. *Place*, 462 U.S. at 709-10. Freezing assets for six and one-half years should require no less.

Thus, because the warrant and probable cause requirements are not impracticable, the "special needs" doctrine is inapplicable at the threshold.

B. The Intrusion on Private Interests Effectuated Here Is Greater Than the Supreme Court Has Ever Permitted Without Warrant or Probable Cause

Second, "special needs" schemes generally involve minimal intrusions on privacy, either because the scope of the search or seizure is constrained, or because it applies only to individuals with reduced expectations of privacy, or both. The freeze of AHIF-Oregon's assets is a more extreme intrusion on private interests than has ever been permitted in the "special needs" context. AHIF-Oregon's assets have been frozen for six years, with no end in sight. As the district court recognized, "[t]he effect of the government's blocking and designation orders is effectively to close AHIF-Oregon's doors." ER 0080.

The district court reasoned that the government's interest in seizing assets of organizations with ties to international terrorist groups "outweighs" plaintiff's interest. ER 0035. But the "special needs" exception does not permit such a simplistic weighing of private and government interests. Rather, even where the government has compelling interests – in avoiding train accidents, protecting children from drugs, protecting human life on airplanes and highways – searches and seizures are valid under the "special needs" exception *only where the intrusion on private interests is minimal*. In upholding drug testing of student athletes, for example, the Court stressed that the intrusion was minimal because:

students have a reduced expectation of privacy; student athletes consent to such searches; and the tests disclose only limited information. *Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646, 654-58 (1995); *see also City of Ontario v. Quon*, 130 S. Ct. 2619, 2631-33 (2010) (upholding audit of police officer's pager where audit was limited and officer had reduced expectation of privacy); *United States v. Aukai*, 497 F.3d 995, 962-63 (9th Cir. 2007) (*en banc*) (upholding airport search under "special needs" where search was limited in scope and duration).

In contrast, the Supreme Court and this Court both invalidated a principal's strip-search of a student to search for Ibuprofen, because the intrusion was too great, even though the Court had previously upheld less intrusive searches of students under the "special needs" doctrine. *Safford Unified Sch. Dist. # 1 v. Redding*, 129 S. Ct. 2633 (2009), *aff'g* 531 F.3d 1071, 1087 (9th Cir. 2008); *cf. New Jersey v. T.L.O.*, 469 U.S. 325 (1985) (upholding search of student's purse for drugs on "reasonable suspicion" under "special needs," stressing students' diminished expectation of privacy).

Similarly, the Supreme Court has upheld searches of parolees and probationers on the ground that they enjoy a reduced expectation of privacy, and have consented to the intrusions as a condition on their freedom. *United States v. Knights*, 534 U.S. 112, 119-22 (2001). The Court has also upheld warrantless

administrative safety inspections of mines and drug testing of customs officials and railroad conductors, on the ground that those who work in these fields know that because of the heightened safety concerns, they are subject to a higher degree of regulation, and, therefore, have a reduced expectation of privacy.[14] Finally, the Court has upheld standardized stops at checkpoints to check for drunk drivers, because the stops lasted at most a few minutes, and involved only a slight intrusion. *Mich. Dep't of State Police v. Sitz*, 496 U.S. 444, 451-53 (1990).

The freeze authorized by IEEPA and imposed on AHIF-Oregon is not limited in scope, and is not limited to persons with reduced expectations of privacy. *See KindHearts II*, 2010 WL 1840841 at *3 (noting that precedents government relied upon to argue that OFAC seizure authority is reasonable all involved minimal intrusions or diminished expectations of privacy, and that neither factor is present here). The freeze immobilizes *all* of a targeted entity's property, and lasts indefinitely. Never before has such an extraordinary intrusion on private interests been deemed "reasonable" without a warrant, *no matter what the government interest at stake.*

---

[14] *Donovan v. Dewey*, 452 U.S. 594, 603-04 (1981) (mine owner); *Skinner v. Railway Labor Executives' Assn*, 489 U.S. 602, 627-28 (1989) (train operators); *New York v. Burger*, 482 U.S. 691, 707 (1987) (automobile-junkyard operators); *Nat'l Treasury Employees Union v. Von Raab*, 489 U.S. 656, 672 (1989) (customs employees).

C. OFAC's Freeze Authority Contains No Adequate Substitute for the Warrant and Probable Cause Requirements

Third, OFAC's freeze authority is unreasonable because it lacks an adequate substitute for the warrant and probable cause requirements as a check on executive discretion. *KindHearts,* 647 F. Supp. 2d at 881-82 (finding "special needs" exception inapplicable because of lack of alternate safeguard limiting executive discretion). Where the government invokes the "special needs" exception, courts look to whether the scheme incorporates restraints that stand in for the warrant and probable cause requirements by cabining executive discretion. *United States v. Bulacan*, 156 F.3d 963, 974 (9th Cir. 1998) (regulation authorizing administrative searches unconstitutional because it did not "create an established procedure that limits discretion and sets the parameters of the search"). Thus, the Supreme Court has upheld *standardized* sobriety checkpoints, but not individualized automobile stops, because standardization reduces the risk of arbitrary enforcement. *See Delaware v. Prouse*, 440 U.S. 648, 654-55 (1979).

Similarly, the Supreme Court has upheld warrantless inventory searches conducted when an automobile is seized and brought into a police station, but only if the police department has standardized procedures for the searches to constrain executive discretion. *Compare Colorado v. Bertine*, 479 U.S. 367, 375-76 (1987)

(upholding inventory search where standardized procedures existed) *with Florida v. Wells*, 495 U.S. 1, 4-5 (1990) (inventory search violated Fourth Amendment because police lacked standardized procedures). And the Court has upheld drug testing where the testing scheme was systematically randomized, thereby eliminating the potential for an abuse of discretion. *Vernonia*, 515 U.S. at 654-57, 663-64; *Skinner*, 489 U.S. at 622; *see also Rise v. Oregon*, 59 F.3d 1556, 1562 (9th Cir. 1995) (upholding taking of blood samples from inmates convicted of certain offenses where "[p]rison officials retain no discretion to choose which persons must submit blood samples").

The court in *KindHearts*, 647 F. Supp. 2d at 881, found that "OFAC's exercise of its blocking power entails no built-in limitations curtailing executive discretion and putting individuals on notice that they are subject to blocking." Neither IEEPA nor the Executive Order establishes any independent oversight that might substitute for a warrant.

The district court deemed it sufficient that OFAC froze AHIF-Oregon's assets based on "its 'reason to believe' that AHIF 'may be engaged in activities that violate' the IEEPA," which it deemed a "reasonable suspicion" standard. ER 0035. But that standard is actually found nowhere in IEEPA, the Executive Order, or the implementing regulations. Moreover, it is an insufficient check on

executive discretion; the Supreme Court has upheld searches based on "reasonable suspicion" only where the intrusion is minimal, such as a brief stop and pat-down frisk of the outer clothing, *Terry v. Ohio*, 392 U.S. 1, 29-31 (1968), or where the individuals affected have reduced expectations of privacy, such as grade school students, *T.L.O.*, or probationers, *Griffin*. Here, by contrast, the district court upheld an indefinite (now six year) seizure of all of AHIF-Oregon's assets, based on nothing more than "reasonable suspicion." That result cannot be reconciled with any previous "special needs" decision of the Supreme Court or this Court.

V. AHIF-OREGON'S DESIGNATION AND REDESIGNATION VIOLATE THE ADMINISTRATIVE PROCEDURE ACT

Defendants' designation and redesignation of AHIF-Oregon also violate the APA. Under the APA, a court must set aside an agency decision if it finds that the decision is (1) arbitrary and capricious; (2) an abuse of discretion; or (3) otherwise not in accordance with law. 5 U.S.C. § 706(2)(A). An agency decision is arbitrary and capricious if the agency fails to "articulate a satisfactory explanation for its action including a 'rational connection between the facts found and the choice made.'" *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto Ins. Co.*, 463 U.S. 29, 43 (1983) (quoting *Burlington Truck Lines v. United States*, 371 U.S. 156, 168 (1962)); *Islamic American Relief Agency v. Gonzales*, 477 F.3d 728, 732

(D.C. Cir. 2007) (applying this standard to OFAC designation).

OFAC violated the APA in three ways: (1) it reached its decision without affording AHIF-Oregon a meaningful opportunity to respond to the charges; (2) it improperly "redesignated" AHIF-Oregon without authorization, as a *post hoc* tactic in response to this lawsuit; and (3) its actions are not supported by the administrative record.

A. OFAC's Redesignation Was Arbitrary and Capricious Because It Failed to Afford AHIF-Oregon a Meaningful Opportunity to Respond

By failing to afford AHIF-Oregon a meaningful opportunity to respond to the charges, OFAC rested its decision on a necessarily incomplete and one-sided administrative record. While this is an independent due process violation, it also renders OFAC's decision arbitrary and capricious. In *Asarco, Inc. v. EPA*, 616 F.2d 1153, 1162 (9th Cir. 1980), this Court held an EPA order arbitrary and capricious because EPA failed to give the affected party an opportunity to respond to the report on which the order was based. *Id.* at 1162 (citing *Bowman Transp.*, 419 U.S. at 288 n.4; *Marathon Oil Co. v. EPA*, 564 F.2d 1253, 1271 (9th Cir. 1977)). Here, too, the district court should have remanded to OFAC to permit AHIF-Oregon an opportunity to respond.

Alternatively, the district court should not have reached the APA challenge,

because the record was by definition incomplete. This Court in *Stickelman v. United States*, 563 F.2d 413 (9th Cir. 1977), held that where the Bureau of Land Management had denied an affected party her due process rights to respond to its actions at the administrative level, the Court could not reach the "arbitrary and capricious" issue until Stickelman was afforded these procedural protections. *Id.* at 417-18; *see also Yong v. Regional Manpower Admr., United States Dep't of Labor*, 509 F.2d 243 (9th Cir. 1975) (holding that court could not reach an arbitrary and capricious challenge where agency may have acted on an incomplete record by not considering applicant's response). Here, too, having concluded that OFAC had failed to provide AHIF-Oregon a meaningful opportunity to respond, the district court should not have reached the arbitrary and capricious issue, but should have remanded. "If the record is not complete, then the requirement that the agency decision be supported by 'the record' becomes almost meaningless." *Portland Audubon Soc'y v. Endangered Species Comm.*, 984 F.2d 1534, 1548 (9th Cir. 1993) (citation omitted).

B. OFAC's Redesignation Was Unauthorized and an Impermissible Attempt at *Post Hoc* Rationalization

OFAC's "redesignation" of AHIF-Oregon was also invalid as a transparent litigation ploy, imposed without legal authorization in order to create a *post hoc*

rationalization. Neither E.O. 13,224, IEEPA, nor OFAC's regulations authorize "redesignation." "An agency literally has no power to act . . . unless and until Congress confers power upon it." *Louisiana Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 374 (1986). Congress knows how to authorize redesignation. In the Antiterrorism and Effective Death Penalty Act of 1996, Congress authorized the Secretary of State to designate Foreign Terrorist Organizations ("FTO"), and expressly required that they be "redesignated" every two years. *See* 8 U.S.C. § 1189(a)(4).[15] It did not do so here.

Absent statutory authorization, "[a]n agency's inherent authority to reconsider its decisions is not without limitation . . . . The agency must also give notice to the parties of its intent to reconsider, and such reconsideration must occur within a reasonable time." *Tokyo Kikai Seisakusho, Ltd. v. United States*, 529 F.3d 1352, 1361 (Fed. Cir. 2008) (citations omitted). Thus, where an agency "attempt[s] to correct legally erroneous [prior] determinations that, left uncorrected, would be vulnerable to court challenge because of the wholly inadequate process by which these determinations were reached," *Belville Mining Co. v. United States*, 999 F.2d 989, 999 (6th Cir. 1993), its reconsideration must

[15] In 2004, Pub. L. 108-458, § 7119(a) (Dec. 17, 2004), removed the "redesignation" provision for FTO's.

be timely," *i.e.*, "'within a short and reasonable time period.'" *Id.* at 997 (quoting *Bookman v. United States*, 453 F.2d 1263, 1265 (Ct. Cl. 1972)). "'[T]he time period would be measured in weeks, not years.'" *Mazaleski v. Treusdell*, 562 F.2d 701, 720 (D.C. Cir. 1977) (quoting *Gratehouse v. United States*, 512 F.2d 1104, 1109 (Ct. Cl. 1975)).

Here, OFAC "redesignated" AHIF-Oregon nearly three and a half *years* after its original designation, and did so in direct response to this lawsuit. In addition, "an agency may undertake such reconsideration only if it . . . affords the claimant proper notice of its intent to reconsider the decision." *Dun & Bradstreet Corp. Found. v. United States Postal Service*, 946 F.2d 189, 193 (2d Cir. 1991). Here, as detailed above, OFAC's notice was patently inadequate, and deprived AHIF-Oregon of a meaningful opportunity to respond.

The district court reasoned that the "redesignation" was not an impermissible *post hoc* justification because it was a "new" final agency action, relying on *Independence Mining Co., Inc. v. Babbitt*, 105 F.3d 502 (9th Cir. 1997). But in *Independence Mining*, this Court found that the agency's later explanations were not *post hoc* because there was no final agency action and "no date certain by which to evaluate an agency's justifications for its actions." *Id*. at 511. Here, by contrast, OFAC's February 2004 freeze and September 2004 designation were

each final agency actions. OFAC's "redesignation" came only after these final agency actions were challenged, and was transparently undertaken in order to revise the same agency action (to freeze AHIF-Oregon). The district court's holding to the contrary would permit OFAC to act unconstitutionally at the outset, and then simply "redesignate" whenever an entity challenged its unconstitutional actions in court.

C. The Evidence in the Administrative Record Does Not Support the Designation and Redesignation of AHIF-Oregon

Finally, OFAC's decision is arbitrary and capricious because the administrative record does not support OFAC's asserted bases for redesignation: (1) that AHIF-Oregon is owned or controlled by Al-Aqil; (2) that AHIF-Oregon is owned or controlled by Al-Buthe; and (3) that AHIF-Oregon provided support to al-Qaeda and other SDGTs through its relationship to AHIF-SA.

i. The Evidence Does Not Show that Al-Aqil Owns or Controls AHIF-Oregon

The district court correctly concluded that Al-Aqil does not own or control AHIF-Oregon. Al-Aqil resigned from the AHIF-Oregon board in March 2003. OFAC did not designate Al-Aqil until June 2004, more than a year later, and did not identify his asserted ownership or control as a basis for AHIF-Oregon's designation until February 2008. As the district court found, there is no evidence

that Al-Aqil exercised ownership or control of AHIF-Oregon after he resigned. Thus, by the time Al-Aqil and AHIF-Oregon were designated, he no longer owned or controlled AHIF-Oregon.

ii. Al-Buthe's Relationship to AHIF-Oregon Does Not Support Designation

When Al-Buthe joined AHIF-Oregon's board, he was not a designated person. He was first designated at the same time that AHIF-Oregon was designated, without any statement of reasons. As Al-Buthe and Nelson both state, Al-Buthe would have resigned had he or AHIF-Oregon been informed that his ownership or control was a basis for AHIF-Oregon's designation. ER 2343 (Nelson Decl., at ¶ 5); ER 2348 (Al-Buthe Decl., at ¶ 11).

Moreover, the record does not support Al-Buthe's designation. If his designation is unfounded, AHIF-Oregon cannot be designated based on its relationship to him. The government claims that Al-Buthe was designated for serving as a "senior official" for AHIF-SA. ER 0067. In fact, he merely volunteered for the organization on issues related to the internet and U.S. relations, and he resigned in 2002, long before AHIF-SA's designation in June 2008. ER 0050; ER 2346-2347 (Al-Buthe Decl., at ¶¶ 3-4). There is no evidence that Al-Buthe provided material support to any act of terrorism or any SDGT. The

fact that Al-Buthe volunteered for AHIF-SA only when it was a non-designated organization, and worked only on the legitimate activities of its internet and U.S. relations, does not support his designation.

iii. The Evidence Does Not Show that AHIF-Oregon Supported Terrorism or SDGTs through its Association with AHIF-SA

OFAC's third basis for redesignating AHIF-Oregon is that as a "branch office" of AHIF-SA, it supported SDGTs and terrorism. As explained above, *see* pp. 34-36, *supra*, the district court's analysis of this ground rests on an erroneous view of E.O. 13,224. AHIF-SA was itself not a designated entity during the entire period that AHIF-Oregon and AHIF-SA existed, so, contrary to the district court's misunderstanding, AHIF-Oregon could not be designated for supporting or otherwise associating with AHIF-SA, without more. Moreover, AHIF-SA no longer existed in 2008, when OFAC first asserted this relationship as a basis for designation. AHIF-SA closed its doors in late 2004. Accordingly, AHIF-Oregon was redesignated in 2008 for a relationship to an entity that was not designated, and no longer existed. If reliance on Al-Aqil's pre-designation relationship was unwarranted, so, too, was reliance on AHIF-SA's pre-designation relationship.

If OFAC had evidence that AHIF-SA supported SDGTs, it could designate *AHIF-SA* – but not AHIF-Oregon, absent evidence that AHIF-Oregon itself

supported SDGTs. Yet in this case OFAC did *not* designate the entity that it claims actually supported SDGTs, AHIF-SA, and instead designated AHIF-Oregon, without any evidence that AHIF-Oregon supported any SDGT or act of terrorism.

While OFAC and the district court both intimate that AHIF-Oregon's donation of $180,000 for Chechen relief was suspicious, neither points to any evidence that rebuts AHIF-Oregon's voluminous evidence showing that this money went to a government-authorized humanitarian relief project, approved by both the Saudi and Russian governments, and carried out by the Saudi Joint Relief Committee. The district court, for example, notes that AHIF-Oregon's offices included photographs of mujahedin and passports of deceased Russian soldiers, ER 0055, but offers nothing to link these materials to any financial or material support to any SDGT or act of terrorism.[16]

[16] Plaintiffs also argued below that IEEPA does not authorize designation of entities not associated with a nation-targeted embargo. Pls. Mem., at 35-40 (Doc. No. 61) (May 8, 2008). This Court subsequently rejected the same argument in *Humanitarian Law Project v. U.S. Treasury Dep't* (*HLP-Treasury*), 578 F.3d 1133 (9th Cir. 2009). Accordingly, plaintiffs will not brief it further here, but preserve the claim, based on the arguments advanced in the district court, should this case reach *en banc* or Supreme Court review.

VI. THE EXECUTIVE ORDER AND REGULATIONS VIOLATE MCASO'S FIRST AMENDMENT RIGHTS AS APPLIED TO THEIR INTENDED SPEECH

MCASO seeks to engage in advocacy coordinated with and for the benefit of AHIF-Oregon, including speaking out and organizing public education activities in conjunction with AHIF-Oregon to challenge the validity of its designation. ER 0090; ER 0141-0142; ER 0161.[17] E.O. 13,224 and OFAC's regulations, however, prohibit such activity as a "service" "for the benefit of" a SDGT. E.O. 13,224, at § 2(a); 31 C.F.R. §§ 594.201, 594.406. As applied to such speech, the Executive Order and its implementing regulations criminalize pure speech on the basis of its content, and therefore violate the First Amendment.

The Executive Order treats advocacy done in coordination with and for the benefit of a SDGT as a prohibited "service." The government contends that "independent advocacy" is not prohibited, and the district court adopted that interpretation. ER 0041. MCASO, however, specifically seeks to coordinate its

[17] Specifically, MCASO "would like to be able to collaborate with and coordinate our efforts with AHIF and its members, so that we can be assured that our advocacy is as effective as possible in defending AHIF's constitutional rights. We would also like to volunteer our services on its behalf in its legal designation challenge, by assisting the lawyers, speaking out in the public, contacting government officials and representatives, holding demonstrations, and writing op-eds and letters for our local newspapers. We would also like to consult with AHIF and its members to determine how best we can be of assistance." ER 2338-2339 (Bauermeister Decl., at ¶ 4).

advocacy with AHIF-Oregon for its benefit. Thus, its speech constitutes a "service" as both the government and the district court defined it. 31 C.F.R. §§ 594.201, 594.406. Moreover, even an "attempt" to provide such a "service" is also prohibited by the "otherwise associated" prong. 31 C.F.R. § 594.316 (defining "otherwise associated with" to include "to attempt . . . to provide . . . services" to a SDGT).

As applied, this prohibition triggers strict scrutiny, because the only "service" MCASO would be providing is via the content of its words. Moreover, the Executive Order and regulations prohibit coordinated advocacy designed to *benefit* AHIF-Oregon, while permitting speech designed to *undermine* AHIF-Oregon's interests. And OFAC regulations exempt the provision of *legal* service in support of AHIF-Oregon's challenge to its designation, but not public education, lobbying, or other advocacy. 31 C.F.R. § 594.506. Thus, whether services are permitted depends on whether their content is legal or nonlegal.

As applied to MCASO's intended speech, therefore, the law penalizes speech, and does so based on the content of what it communicates. *Holder v. Humanitarian Law Project* (*HLP*), 130 S. Ct. 2705, 2724 (2010) (where generally applicable law is directed at individual "because of what his speech communicate[s]," the law is subject to strict scrutiny); *Cohen v. California,* 403

U.S. 15, 18 (1971) (breach-of-peace statute as applied to words on defendant's jacket triggered strict scrutiny, because "the only 'conduct' which the State sought to punish is the fact of communication"); *see generally* Eugene Volokh, *Speech as Conduct: Generally Applicable Law, Illegal Courses of Conduct, 'Situation-Altering Utterances,' and the Uncharted Zones*, 90 Cornell L. Rev. 1277, 1284 (2005) ("when a generally applicable law is content-based as applied – when speech triggers the law because of the harms that may flow from what the speech says – the law should be subject to full-fledged First Amendment scrutiny").

In *HLP*, the Supreme Court upheld the application of a similar prohibition to individuals and organizations that sought to provide "material support" to designated *foreign* terrorist groups by teaching them how to advocate human rights and helping them in peace talks, but stressed that its decision did not address the validity of such a ban as applied to speech in support of *domestic* groups. *HLP*, 130 S. Ct. at 2730. The Court held that strict scrutiny was satisfied because even speech advocating only peaceful ends might further terrorism. By legitimating the terrorist organization, it might increase its ability to attract funds that could be used for terrorist acts. *Id.* at 2725. And it "frees up other resources within the organization that may be put to violent ends." *Id.*

These rationales are inapplicable to a *domestic* SDGT, such as AHIF-

Oregon.[18] Unlike a "foreign terrorist organization," most or all of whose resources are beyond the United States' control, there is no risk that MCASO's advocacy will "free up resources" that AHIF-Oregon can use for violent ends, or empower AHIF-Oregon to raise money that can be spent on terrorist acts, because all of AHIF-Oregon's assets are frozen. The only way that AHIF-Oregon will be able to spend any resources on anything is if this Court or OFAC on remand concludes that it was improperly designated. Accordingly, the factors that led the Supreme Court to uphold 18 U.S.C. § 2339B are wholly inapplicable as applied to a *domestic* group whose assets have been frozen, as here.

CONCLUSION

For all the above reasons, the decision of the district court should be reversed.

/s/ David Cole

David Cole
Amanda Shanor, Thomas H. Nelson,
J. Ashlee Albies, Lynne Bernabei, and
Alan R. Kabat
Attorneys for Plaintiffs-Appellants

[18] *HLP-Treasury*, 578 F.3d 1133, and *Humanitarian Law Project v. Reno*, 205 F.3d 1130, 1133-36 (9th Cir. 2000), are distinguishable, as they addressed only "material support" to *foreign* organizations. To the extent that those decisions applied intermediate scrutiny to such aid when it took the form of speech, they are inconsistent with the Supreme Court's decision in *HLP*.

Certificate of Compliance

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(C) and Ninth Circuit Rule 32-1, because this brief contains 13,838 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

This brief complies with the type-face requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced type face using Microsoft Word in Times New Roman 14 point.

By: /s/ Alan R. Kabat
Alan R. Kabat, Esquire

Statement of Related Cases

Pursuant to Circuit Rule 28-2.6, the undersigned hereby certifies that there are no related cases presently pending before this court.

By: /s/ Alan R. Kabat
Alan R. Kabat, Esquire

Addendum

Addendum

Exec. Order No. 13,224 (Sept. 23, 2001), 66 Fed. Reg. 49,079.

Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism.

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. § 1701 et seq.) (IEEPA), the National Emergencies Act (50 U.S.C. § 1601 et seq.), section 5 of the United Nations Participation Act of 1945, as amended (22 U.S.C. § 287c) (UNPA), and section 301 of title 3, United States Code, and in view of United Nations Security Council Resolution (UNSCR) 1214 of December 8, 1998, UNSCR 1267 of October 15, 1999, UNSCR 1333 of December 19, 2000, and the multilateral sanctions contained therein, and UNSCR 1363 of July 30, 2001, establishing a mechanism to monitor the implementation of UNSCR 1333,

I, GEORGE W. BUSH, President of the United States of America, find that grave acts of terrorism and threats of terrorism committed by foreign terrorists, including the terrorist attacks in New York, Pennsylvania, and the Pentagon committed on September 11, 2001, acts recognized and condemned in UNSCR 1368 of September 12, 2001, and UNSCR 1269 of October 19, 1999, and the continuing and immediate threat of further attacks on United States nationals or the United States constitute an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States, and in furtherance of my proclamation of September 14, 2001, Declaration of National Emergency by Reason of Certain Terrorist Attacks, hereby declare a national emergency to deal with that threat. I also find that because of the pervasiveness and expansiveness of the financial foundation of foreign terrorists, financial sanctions may be appropriate for those foreign persons that support or otherwise associate with these foreign terrorists. I also find that a need exists for further consultation and cooperation with, and sharing of information by, United States and foreign financial institutions as an additional tool to enable the United States to combat the financing of terrorism.

I hereby order:

Section 1. Except to the extent required by section 203(b) of IEEPA (50 U.S.C. § 1702(b)), or provided in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date of this order, all property and interests in property of the following persons that are in the United States or that hereafter come within the United States, or that hereafter come within the possession or control of United States persons are blocked:

(a) foreign persons listed in the Annex to this order;

(b) foreign persons determined by the Secretary of State, in consultation with the Secretary of the Treasury and the Attorney General, to have committed, or to pose a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States;

(c) persons determined by the Secretary of the Treasury, in consultation with the Secretary of State and the Attorney General, to be owned or controlled by, or to act for or on behalf of those persons listed in the Annex to this order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of this order;

(d) except as provided in section 5 of this order and after such consultation, if any, with foreign authorities as the Secretary of State, in consultation with the Secretary of the Treasury and the Attorney General, deems appropriate in the exercise of his discretion, persons determined by the Secretary of the Treasury, in consultation with the Secretary of State and the Attorney General;

(i) to assist in, sponsor, or provide financial, material, or technological support for, or financial or other services to or in support of, such acts of terrorism or those persons listed in the Annex to this order or determined to be subject to this order; or

(ii) to be otherwise associated with those persons listed in the Annex to this order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of this order.

Sec. 2. Except to the extent required by section 203(b) of IEEPA (50 U.S.C. § 1702(b)), or provided in regulations, orders, directives, or licenses that may be

issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date:

(a) any transaction or dealing by United States persons or within the United States in property or interests in property blocked pursuant to this order is prohibited, including but not limited to the making or receiving of any contribution of funds, goods, or services to or for the benefit of those persons listed in the Annex to this order or determined to be subject to this order;

(b) any transaction by any United States person or within the United States that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in this order is prohibited; and

(c) any conspiracy formed to violate any of the prohibitions set forth in this order is prohibited.

Sec. 3. For purposes of this order:

(a) the term "person" means an individual or entity;

(b) the term "entity" means a partnership, association, corporation, or other organization, group, or subgroup;

(c) the term "United States person" means any United States citizen, permanent resident alien, entity organized under the laws of the United States (including foreign branches), or any person in the United States; and

(d) the term "terrorism" means an activity that--

(i) involves a violent act or an act dangerous to human life, property, or infrastructure; and

(ii) appears to be intended--

(A) to intimidate or coerce a civilian population;

(B) to influence the policy of a government by intimidation or coercion; or

(C) to affect the conduct of a government by mass destruction, assassination, kidnapping, or hostage-taking.

Sec. 4. I hereby determine that the making of donations of the type specified in section 203(b)(2) of IEEPA (50 U.S.C. § 1702(b)(2)) by United States persons to persons determined to be subject to this order would seriously impair my ability to deal with the national emergency declared in this order, and would endanger Armed Forces of the United States that are in a situation where imminent involvement in hostilities is clearly indicated by the circumstances, and hereby prohibit such donations as provided by section 1 of this order. Furthermore, I hereby determine that the Trade Sanctions Reform and Export Enhancement Act of 2000 (title IX, Public Law 106-387) shall not affect the imposition or the continuation of the imposition of any unilateral agricultural sanction or unilateral medical sanction on any person determined to be subject to this order because imminent involvement of the Armed Forces of the United States in hostilities is clearly indicated by the circumstances.

Sec. 5. With respect to those persons designated pursuant to subsection 1(d) of this order, the Secretary of the Treasury, in the exercise of his discretion and in consultation with the Secretary of State and the Attorney General, may take such other actions than the complete blocking of property or interests in property as the President is authorized to take under IEEPA and UNPA if the Secretary of the Treasury, in consultation with the Secretary of State and the Attorney General, deems such other actions to be consistent with the national interests of the United States, considering such factors as he deems appropriate.

Sec. 6. The Secretary of State, the Secretary of the Treasury, and other appropriate agencies shall make all relevant efforts to cooperate and coordinate with other countries, including through technical assistance, as well as bilateral and multilateral agreements and arrangements, to achieve the objectives of this order, including the prevention and suppression of acts of terrorism, the denial of financing and financial services to terrorists and terrorist organizations, and the sharing of intelligence about funding activities in support of terrorism.

Sec. 7. The Secretary of the Treasury, in consultation with the Secretary of State and the Attorney General, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by IEEPA and UNPA as may be necessary to carry out the purposes of this order. The Secretary of the Treasury may redelegate any of these functions to

other officers and agencies of the United States Government. All agencies of the United States Government are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order.

Sec. 8. Nothing in this order is intended to affect the continued effectiveness of any rules, regulations, orders, licenses, or other forms of administrative action issued, taken, or continued in effect heretofore or hereafter under 31 C.F.R. chapter V, except as expressly terminated, modified, or suspended by or pursuant to this order.

Sec. 9. Nothing contained in this order is intended to create, nor does it create, any right, benefit, or privilege, substantive or procedural, enforceable at law by a party against the United States, its agencies, officers, employees or any other person.

Sec. 10. For those persons listed in the Annex to this order or determined to be subject to this order who might have a constitutional presence in the United States, I find that because of the ability to transfer funds or assets instantaneously, prior notice to such persons of measures to be taken pursuant to this order would render these measures ineffectual. I therefore determine that for these measures to be effective in addressing the national emergency declared in this order, there need be no prior notice of a listing or determination made pursuant to this order.

Sec. 11. (a) This order is effective at 12:01 a.m. eastern daylight time on September 24, 2001.

(b) This order shall be transmitted to the Congress and published in the Federal Register.

GEORGE W. BUSH
THE WHITE HOUSE,
September 23, 2001.

Selected Provisions of 31 C.F.R. Part 594 (notes omitted)

31 C.F.R. § 594.201, Prohibition on transactions involving blocked property.

(a) Except as authorized by statutes, regulations, orders, directives, rulings, instructions, licenses or otherwise, and notwithstanding any contracts entered into or any license or permit granted prior to the effective date, property and interests in property of the following persons that are in the United States, that hereafter come within the United States, or that hereafter come within the possession or control of U.S. persons, including their overseas branches, are blocked and may not be transferred, paid, exported, withdrawn or otherwise dealt in:

(1) Foreign persons listed in the Annex to Executive Order 13224 of September 23, 2001, as may be amended;

(2) Foreign persons determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of Homeland Security and the Attorney General, to have committed, or to pose a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States;

(3) Persons determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Secretary of Homeland Security and the Attorney General, to be owned or controlled by, or to act for or on behalf of, any person whose property or interests in property are blocked pursuant to paragraphs (a)(1), (a)(2), (a)(3), or (a)(4)(i) of this section; or

(4) Except as provided in section 5 of Executive Order 13224, any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Secretary of Homeland Security and the Attorney General:

> (i) To assist in, sponsor, or provide financial, material, or technological support for, or financial or other services to or in support of:
>
> > (A) Acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States, or

(B) Any person whose property or interests in property are blocked pursuant to paragraph (a) of this section; or

(ii) To be otherwise associated with any person whose property or interests in property are blocked pursuant to paragraphs (a)(1), (a)(2), (a)(3), or (a)(4)(i) of this section.

(b) Unless otherwise authorized by this part or by a specific license expressly referring to this section, any dealing in any security (or evidence thereof) held within the possession or control of a U.S. person and either registered or inscribed in the name of or known to be held for the benefit of any person whose property or interests in property are blocked pursuant to § 594.201(a) is prohibited. This prohibition includes but is not limited to the transfer (including the transfer on the books of any issuer or agent thereof), disposition, transportation, importation, exportation, or withdrawal of any such security or the endorsement or guaranty of signatures on any such security. This prohibition applies irrespective of the fact that at any time (whether prior to, on, or subsequent to the effective date) the registered or inscribed owner of any such security may have or might appear to have assigned, transferred, or otherwise disposed of the security.

31 C.F.R. § 594.406, Provision of services.

(a) Except as provided in § 594.207, the prohibitions on transactions or dealings involving blocked property contained in §§ 594.201 and 594.204 apply to services performed in the United States or by U.S. persons, wherever located, including by an overseas branch of an entity located in the United States:

(1) On behalf of or for the benefit of a person whose property or interests in property are blocked pursuant to § 594.201(a); or

(2) With respect to property interests subject to §§ 594.201 and 594.204.

(b) Example: U.S. persons may not, except as authorized by or pursuant to this part, provide legal, accounting, financial, brokering, freight forwarding, transportation, public relations, educational, or other services to a person whose property or interests in property are blocked pursuant to § 594.201(a).

31 C.F.R. § 594.506, Provision of certain legal services authorized.

(a) The provision of the following legal services to or on behalf of persons whose property or interests in property are blocked pursuant to § 594.201(a) is authorized, provided that all receipts of payment of professional fees and reimbursement of incurred expenses must be specifically licensed:

(1) Provision of legal advice and counseling on the requirements of and compliance with the laws of any jurisdiction within the United States, provided that such advice and counseling are not provided to facilitate transactions in violation of this part;

(2) Representation of persons when named as defendants in or otherwise made parties to domestic U.S. legal, arbitration, or administrative proceedings;

(3) Initiation and conduct of domestic U.S. legal, arbitration, or administrative proceedings in defense of property interests subject to U.S. jurisdiction;

(4) Representation of persons before any federal or state agency with respect to the imposition, administration, or enforcement of U.S. sanctions against such persons;

(5) Representation of persons, wherever located, detained within the jurisdiction of the United States or by the United States government, with respect to either such detention or any charges made against such persons, including, but not limited to, the conduct of military commission prosecutions and the initiation and conduct of federal court proceedings; and

(6) Provision of legal services in any other context in which prevailing U.S. law requires access to legal counsel at public expense.

(b) The provision of any other legal services to persons whose property or interests in property are blocked pursuant to § 594.201(a), not otherwise authorized in this part, requires the issuance of a specific license.

(c) Entry into a settlement agreement affecting property or interests in property or the enforcement of any lien, judgment, arbitral award, decree, or other

order through execution, garnishment, or other judicial process purporting to transfer or otherwise alter or affect property or interests in property blocked pursuant to § 594.201(a) is prohibited except to the extent otherwise provided by law or unless specifically licensed in accordance with § 594.202(e).

Certificate of Service

I hereby certify that on this 30th day of July, 2010, a copy of the foregoing Appellants' Opening Brief was served on counsel of record by this Court's ECF system, and by electronic mail and overnight mail, to:

Douglas N. Letter, Esquire
Michael P. Abate, Esquire
U.S. Department of Justice, Civil Division
950 Pennsylvania Avenue, N.W., No. 7318
Washington, D.C. 20530

/s/ Alan R. Kabat

Alan R. Kabat
Bernabei & Wachtel, PLLC
1775 T Street, N.W.
Washington, D.C. 20009-7124
(202) 745-1942 (Tel)
(202) 745-2627 (Fax)
Kabat@bernabeipllc.com
Attorney for Plaintiffs-Appellants

Circuit Rule 31-2.2(a) Statement of Consent

Alan Kabat

From: Alan Kabat
Sent: Friday, July 02, 2010 2:07 PM
To: 'Abate, Michael (CIV)'; Letter, Douglas (CIV)
Subject: RE: Al Haramain / OFAC

Michael,

That should not present any problem, and thanks for the heads-up. If needed, that would push our reply brief into mid-October.

Alan

Alan R. Kabat
Bernabei & Wachtel, PLLC
1775 T Street, N.W.
Washington, D.C. 20009-7124
tel. (202) 745-1942 (ext. 242)
fax (202) 745-2627
email: Kabat@BernabeiPLLC.com

From: Abate, Michael (CIV) [mailto:Michael.Abate@usdoj.gov]
Sent: Friday, July 02, 2010 2:04 PM
To: Alan Kabat; Letter, Douglas (CIV)
Subject: RE: Al Haramain / OFAC

Alan:

Thanks for the message. We don't have an objection to your extension request, provided that we could count on a similar courtesy in the event we need to seek an extension of our new deadline (8/30). I am going to be traveling out of the country from 9/3 – 9/14. Thus, if we do end up needing to seek an extension, we would appreciate your willingness to agree to a time frame that would allow us time to file after I return. Hopefully that won't become necessary, but if it does we would appreciate your consideration.

Thanks,
Mike

Michael P. Abate

US Department of Justice
Civil Division, Appellate Staff
950 Pennsylvania Ave, NW, Rm. 7318
Washington, DC 20530-0001
Tel: (202) 616-8209
Fax: (202) 514-9405
Michael.Abate@usdoj.gov

From: Alan Kabat [mailto:kabat@bernabeipllc.com]
Sent: Friday, July 02, 2010 1:14 PM
To: Letter, Douglas (CIV); Abate, Michael (CIV)
Subject: Al Haramain / OFAC

Doug and Michael,

As one of our attorneys recently had surgery, I am notifying you that we intend to request a single extension of time pursuant to Ninth Circuit Rule 31-2.2(a), of 14 days. The remaining deadlines would similarly be shifted by 14 days, if this request is granted.

Please let me know if you have any questions.

Thanks,

Alan

Alan R. Kabat
Bernabei & Wachtel, PLLC
1775 T Street, N.W.
Washington, D.C. 20009-7124
tel. (202) 745-1942 (ext. 242)
fax (202) 745-2627
email: Kabat@BernabeiPLLC.com