Due Process?
The State of U.S. Treasury’s Terrorist Listing Procedures

July 29, 2019
Brief Historical Background

The PATRIOT Act of 2001: a series of amendments to existing laws that dramatically expanded powers and prohibitions

- Prohibition on material support of terrorism
- Sanctions laws and Executive Order 13224
- Bank Secrecy Act
Post 9/11 Executive Orders
Cancel Sanctions Humanitarian Exemption

International Emergency Economic Powers Act exempts from sanctions:

• donations of articles such as food, clothing, medicine intended to be used to relieve human suffering...

• UNLESS the President determines such donations would “impair his ability to deal with the emergency,” are coerced or would endanger US armed forces.

• Beginning with EO 13224 this humanitarian exemption is routinely cancelled in terrorism-related EOs.
New Powers Used to Shut Down 9 US Charities (Dec 2001-Jan 2009)

Shut Down "Pending Investigation"

- **Al-Haramain Islamic Foundation** 1/19/04 (Later designated on 9/9/04)
- **Benevolence International Foundation** 12/14/01 (Later designated on 11/02)
- **Global Relief Foundation** 12/14/01 (Later designated on 10/18/02)
- **KindHearts for Charitable and Humanitarian Development, Inc** 2/19/06

Designated Only:

- **Goodwill Charitable Organization** 7/24/07
- **Holy Land Foundation** 12/01/01, re-designated 5/02
- **Islamic African Relief Agency** 10/13/04
- **Tamil Rehabilitation Organization** 11/15/07
- **Tamil Foundation** 2/11/09
Consequences of Designations of US Charities

See details in 2008 report
https://www.charityandsecurity.org/studies/Collateral_Damage

- Funds subject to US jurisdiction frozen
- Records, property and equipment can be seized
- U.S. persons and entities barred from engaging in transactions
- Limited access to funds to pay for legal representation
- Automatic revocation of tax-exempt status (501(c)(p))
- Reputational damage
Limited Appeal Rights

• When the designation is published in the Federal Register, it may, but is not required to, include a list of reasons.

• A listed person or entity can then request reconsideration under 31 C.F.R. § 501.807, but Treasury has discretion to grant or decline an in-person meeting.

• As an additional wrinkle, the process is exempt from the Administrative Procedure Act’s “right to a hearing before a quasi-independent administrative law judge,” because Treasury operates the sanctions regime under the authority of the president.

• Designation can be challenged in a federal court at any point, but the standard of review is limited to “whether Treasury’s action was arbitrary or capricious, based on the administrative record.” If a designated charity loses its appeal it remains on the list, freezing the assets indefinitely.

• There is no formal process in the case of U.S. charities to ensure these assets are released to another charity for charitable purposes.